

2009

# Tonda Lynn Hampton v. Professional Title Services; and Clay G. Holbrook : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS  
STATE OF UTAH

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TONDA LYNN HAMPTON,

Plaintiff and Appellant,

vs.

PROFESSIONAL TITLE SERVICES; and  
CLAY G. HOLBROOK,

Defendants and Appellees.

**APPELLEES' BRIEF**

Appellate No. 20090942-CA

Civil No. 070700813  
Judge Douglas B. Thomas

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## I. JURISDICTION OF THE APPELLATE COURT

This Court has jurisdiction over this matter in accordance with Utah Code Ann. § 78A-3-102(4), and pursuant to the Order entered by the Utah Supreme Court dated November 17, 2009, transferring this matter to this Court.

## II. STATEMENT OF THE ISSUES

**Issue:** Defendants/Appellees Professional Title Services and Clay Holbrook assert that the principal issue presented for review is whether the trial court properly granted summary judgment in favor of Defendants.

**Standard for review:** Summary judgment is appropriate if “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) U.R.C.P. In reviewing a grant of summary judgment, the appellate court “grant[s] no deference to the court below, but instead, ‘the district court’s legal conclusions and ultimate grant or denial of summary judgment are reviewed for correctness.’” *Barnes v. Clarkson*, 2008 UT App 44, ¶ 8, 178 P.3d 930 (quoting *Massey v. Griffiths*, 2007 UT 10, ¶ 8, 152 P.3d 312). Additionally, in reviewing a grant of summary judgment, the appellate court “view[s] the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.” *Arnold Indus. v. Love*, 2002 UT 133, ¶ 11, 63 P.3d 721 (quoting *DCM Inv. Corp. v. Pinecrest Inv. Co.*, 2001 UT 91, P6, 34 P.3d 785).

### III. STATEMENT OF THE CASE

Plaintiff Tonda Hampton (hereafter referred to as “Plaintiff” or “Ms. Hampton”) filed her original complaint against Defendants on August 14, 2007 (R. 1). She eventually filed her Third Amended Complaint on November 5, 2008 (R. 131), bringing claims against Defendants for declaratory judgment, (R. 138), breach of contract (R. 140), breach of covenant of good faith and fair dealing (R. 141), slander of title (R. 142), negligence (R. 143), and fraud (R. 144). The factual allegations in Plaintiff’s Third Amended Complaint pertain to transactions involving parcels of real property in Carbon County, Utah: one parcel of approximately 4,000 acres (R. 134), and one parcel of approximately 6.32 acres with a residence (R. 134). Essentially, Plaintiff alleges that she owned those parcels together with Kim Jensen (whom she refers to as K.C. Jensen or her “Joint Tenant”), but that her name was “fraudulently” removed from the title to the properties. (R. 133-138). Plaintiff alleges that Defendants Professional Title Services and Clay Holbrook assisted Kim Jensen with the transactions wherein Plaintiff lost her interest in the properties. (R. 133-138).

In the Third Amended Complaint, Plaintiff alleges that she entered into an oral agreement with Clay Holbrook wherein she would “relinquish her rights” in the 6.32 acres parcel of property by selling that property to Defendants for \$21,185.47. (R. 136 at ¶ 31). Plaintiff asserts that Defendant Clay Holbrook refused to finalize the transaction, and thereby breached their oral agreement. (R. 136-138, 140-142).

Plaintiff was given ample time and opportunity to conduct discovery. The first scheduling order was entered on June 13, 2008, providing that fact discovery should be

completed by October 31, 2008 (R. 76-77). After Plaintiff filed a motion to amend the scheduling order, a second scheduling order was entered on August 11, 2008, providing that fact discovery would end on December 2, 2008. (R. 84-86, 92-93). A third scheduling order was entered on March 9, 2009, providing that fact discovery should be completed by July 10, 2009. (R. 157-158). During the course of discovery, Plaintiff served various discovery requests, to which Defendants responded and provided at least 668 pages of documents pertaining to the underlying transactions. (R. 81-83, 97, 149, 172, 174, 233). Plaintiff had ample time and opportunity to conduct discovery, she served several discovery requests, and in response to such discovery requests she received hundreds of pages of documentation pertaining to the real property transactions she put at issue in her Third Amended Complaint.

After the close of fact discovery (pursuant to the deadline in the third amended scheduling order), Defendants filed their motion for summary judgment. (R. 235; *see also* Addendum 1 at p. 29). Plaintiff filed a memorandum in opposition to the motion for summary judgment, and an affidavit supporting her memorandum. (R. 377-503; *see also* Addendum 7 and 8 at pp. 105-130). She attached several documents to her affidavit, most of which had been produced by Defendants. (R. 401-503). However, neither her memorandum in opposition nor her affidavit made any attempt to controvert the statement of undisputed facts as set forth in Defendants' memorandum. (R. 377-400). A hearing on Defendants' Motion for Summary Judgment was held on September 21, 2009. (R. 547; *see also* Addendum 9 at pp. 131-168). During the hearing, Judge Thomas heard oral argument from both parties, and asked Plaintiff several questions regarding her



claims and contentions. (R. 547 at pages 13-28; *see also* Addendum 9 at pp. 135-150)<sup>1</sup>. As a result of the briefs and the hearing, the trial court granted Defendants' motion. The Order on Defendants' Motion for Summary Judgment was entered on October 8, 2009, granting summary judgment to Defendants on all of Plaintiff's claims. (R. 533-541; *see also* Addendum "A" to the Brief of Appellant). Plaintiff then filed this appeal.

#### IV. STATEMENT OF THE FACTS

1. Plaintiff Tonda Hampton (hereafter referred to as "Plaintiff" or "Hampton") filed a lawsuit against Kim Jensen in the Seventh District Court on November 10, 1999, case number 994700340 (referred to hereafter as the "1999 Suit."). (R. 240, 258-276).

2. In conjunction with the 1999 Suit, Plaintiff recorded several lis pendens against parcels of real property, as follows:

- a. Recorded on November 15, 1999, in the Carbon County Recorder's Office, as Entry No. 77489, against approximately 4,078.61 acres of real property (R. 240, 280-282; *see* Addendum 2(a) at p. 41);
- b. Recorded on February 4, 2000, in the Carbon County Recorder's Office, as Entry No. 78686, against two parcels of property, together with all rights of access, grazing rights, and water rights (R. 241, 283-284; *see* Addendum 2(b) at p. 44);
- c. Recorded on March 31, 2000, in the Carbon County Recorder's Office, as Entry No. 79477, against two parcels of property, together with all rights of

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<sup>1</sup> Only the first page of the transcript of the hearing on Defendants' Motion for Summary Judgment was marked as part of the record, number 547. Therefore, references to the transcript of the summary judgment hearing will refer to the number marked as the record, 547, followed by individual pages as identified in the transcript.

access, grazing rights, and water rights (R. 241, 285-286; *see* Addendum 2(c) at p. 46);

d. Recorded on March 31, 2000, in the Carbon County Recorder's Office, as Entry No. 79478, against approximately 4,078.61 acres of real property (R. 241, 287-289; *see* Addendum 2(d) at p. 48).

3. Two of the lis pendens specifically state, "The Petitioner [Ms. Hampton] claims marital interest or a partnership interest in the above-described lands, this being the object of the action." (R. 241, 286, 289; *see* Addendum 2 at pp. 47, 50).

4. On January 23, 2002, the Seventh Judicial District Court, Judge Scott N. Johansen, entered a stipulated order in the 1999 Suit requiring Ms. Hampton to release her lis pendens as to two specific parcels so those parcels could be sold to third parties (R. 290-312; *see* Addendum 3): (1) the Ghost Town Guest Ranch Lodge, consisting of approximately 6.37 acres) (hereafter referred to as "House Parcel"); (2) a total of 675 acres west of Helper, Utah (hereafter referred to as "Vacant Parcel."). (R. 241, 290-293; *see* Addendum 3 at pp. 58-61).

5. The Stipulated Order of the 1999 Suit provided that the lis pendens was to remain in effect with respect to the remainder of the property. (R. 242, 294).

6. The Stipulated Order also ordered that the two parcels be sold, and after the payment of certain expenses, the proceeds from the sale should be "deposited into an interest bearing trust account, set up by counsel for [Tonda Hampton and Kim Jensen], with both signatures required for disbursements, which funds are to be distributed as the Court orders and as the parties might agree." (R. 242, 294 at ¶ 8).

7. Defendant Professional Title Services was retained as the closing and escrow agent for the sales of the two parcels. (R. 242, 313-317).

8. At the time Professional Title Services became involved, the Home Parcel was under contract to sell to Leo Foy and Clayton Foy for \$200,000.00. (R. 242, 314 at ¶¶ 4-7).

9. The Vacant Parcel was also under contract to sell to Leo Foy and Clayton Foy, for a price of \$135,000.00. (R. 242, 314 at ¶¶ 4-7).

10. Defendants had no involvement in the negotiation of the two contracts, but was only involved to act as closing and escrow agent for the transaction. (R. 242, 314 at ¶ 7).

11. The two transactions took approximately two months from when Professional Title Services was retained until the transactions closed in January, 2002. During that time period, Defendant Clay Holbrook ("Holbrook"), the President of Professional Title Services, was in communication with Richard Golden, the attorney for Kim Jensen, and Douglas Stowell, the attorney for Tonda Hampton. (R. 242, 314 at ¶ 9).

12. Before the transactions closed, Holbrook was informed by both Richard Golden and Douglas Stowell that the parties had agreed to escrow the proceeds from the sales, and that the parties' agreement would be entered as an order of the Court. (R. 243, 315 at ¶ 10).

13. The transactions both closed on January 25, 2002. (R. 243, 315 at ¶ 10, 318-321).

14. The settlement statement from the sale of the House Parcel shows that the proceeds from the sale, after deducting payments for loans and other costs, were \$42,060.94. (R. 243, 315 at ¶ 12, 318).

15. The settlement statement for the Vacant Parcel shows that the proceeds from the sale, after deducting payments for loans and other costs, were \$40,466.15. (R. 243, 315 at ¶ 13, 320).

16. After the transactions closed and the funds were received by Professional Title Services, Holbrook caused the proceeds to be distributed as required by the Court. (R. 243, 315 at ¶ 14).

17. The proceeds from the sale of the Vacant Parcel, in the amount of \$40,466.15, were distributed by way of a check from Professional Title Services to Richard R. Golden and Douglas Stowell, the attorneys for Kim Jensen and Tonda Hampton, dated January 29, 2002. (R. 243, 315 at ¶ 15, 322).

18. The proceeds from the sale of the House Parcel, in the amount of \$42,060.94, were distributed by way of a check from Professional Title Services to Richard R. Golden and Douglas Stowell, the attorneys for Kim Jensen and Tonda Hampton, dated January 29, 2002. (R. 243, 315-316 at ¶ 16, 323).

19. Professional Title Services was only retained to act as closing and escrow agent, and once the checks were issued to the two attorneys, neither Professional Title Services nor Clay Holbrook had further involvement. Neither Professional Title Services nor Clay Holbrook has any knowledge of what happened to the proceeds once the attorneys received them, or how the proceeds were distributed. (R. 244, 316 at ¶ 17).

20. On December 13, 2002, Plaintiff filed another lawsuit against Kim Jensen and Double J. Triangle, LLC, in the Seventh Judicial District Court, case number 020701072 (“2002 Suit”). (R. 244, 325-328, 363-364; *see* Addendum 5 at p. 90).

21. In conjunction with the 2002 Suit, Plaintiff recorded a lis pendens against many of the same parcels at issue in the 1999 Suit and identified on the lis pendens recorded in the 1999 Suit (“2002 Lis Pendens”). (R. 244, 280-289, 329-331; *see* Addendum 2 at page 51).

22. The 2002 Lis Pendens is signed by Plaintiff, and states, “During this case, a Lis Pendens need [sic] to be in place. To protect the Real Estate involved. Respondent [Kim Jensen] has been depleting, hiding, transferring, out of Petitioners [sic] name, Fraudulently.” (R. 244, 331; *see* Addendum 2 at p. 53).

23. On January 6, 2003, Plaintiff filed another lawsuit against Kim Jensen in the Seventh Judicial District Court, case number 030700004 (“2003 Suit”). (R. 244, 332-336, 366-367; *see* Addendum 5 at p. 93).

24. In conjunction with the 2003 suit, Plaintiff filed a lis pendens against many of the same properties identified in the lis pendens of the 1999 Suit (“2003 Lis Pendens”). (R. 245, 337-339; *see* Addendum 2 at p. 54).

25. On April 23, 2004, Plaintiff filed another lawsuit against Kim Jensen in the Seventh Judicial District Court, as case number 040700256 (“2004 Suit”). (R. 245, 340-342; *see* Addendum 4 at p. 65).

26. In the 2004 Suit, Plaintiff named Kim Jensen and Richard Golden, a former attorney of Kim Jensen, as defendants. (R. 245, 340).

27. In the 2004 Suit, Plaintiff alleged that an “Interest Bearing Trust Account” was established, referring to the Stipulated Order entered in the 1999 Suit on January 23, 2002. (R. 245, 340). Plaintiff also alleged that the “trust account no longer exists.” (R. 245, 340).

28. Also in the 2004 Suit, Plaintiff alleged that Kim Jensen “has now sold all of our other Carbon County Real estate,” and “Defendants [sic] True Records will show that Petitioner [Tonda Hampton] has never given any oral or written document to allow any ownership change on approx. 4,000 acre[s, w]hich are at issue.” (R. 245, 341; *see* Addendum 4 at p. 67).

29. In response to Plaintiff’s complaint filed in the 2004 Suit, Kim Jensen filed a motion to dismiss, and a memorandum in support. (R. 245, 343-372; *see* Addendum 5).

30. The motion to dismiss and memorandum in support filed by Kim Jensen in the 2004 Suit asserted the defense of res judicata and set forth the history of Plaintiff’s various lawsuits filed against Kim Jensen. (R. 245, 345-347). The memorandum contains as exhibits various court pleadings that have since been destroyed by the Seventh Judicial District Court (R. 245-246):

- a. Exhibit I to the memorandum is the Order, Findings, and Conclusions for the 1999 Case, holding that Tonda Hampton and Kim Jensen did not have a common law marriage, dismissing the 1999 Suit with prejudice, and ordering the lis pendens filed by Tonda Hampton against all real property to be released (R. 246, 352-361; *see* Addendum 5 at pp. 80-89);

- b. Exhibit II is the complaint in the 2002 Suit, containing allegations that the real property should be divided (R. 246, 362-364; *see* Addendum 5 at pp. 90-92) ;
- c. Exhibit III is the complaint in the 2003 Suit, alleging that Kim Jensen had “sold and hidden” real property, and asking the Court to “reverse ownership” of the real property and other assets (R. 246, 365-367; *see* Addendum 5 at pp. 93-95);
- d. Exhibit IV is a ruling in the 2002 Suit and the 2003 Suit (which cases were apparently consolidated), dismissing the claims pertaining to the real property, and ordering the lis pendens filed by Plaintiff to be released. (R. 246, 368-372; *see* Addendum 5 at pp. 96-99).

31. In response to the motion to dismiss filed by Kim Jensen in the 2004 Suit, the Seventh Judicial District Court granted the motion and entered an order on September 13, 2006, dismissing the 2004 Suit on the ground that the 2004 Suit was barred due to the doctrine of res judicata (“2004 Order”). (R. 246, 373-376; *see* Addendum 6).

32. Plaintiff filed this action against these Defendants on August 14, 2007. (R. 1, 246). Plaintiff filed her Third Amended Complaint on November 5, 2008, bringing allegations regarding the real property that was litigated in the 1999 Suit, the 2002 Suit, the 2003 Suit, and the 2004 Suit. (R. 131-148, 246-247) Plaintiff’s requested relief asks for, “[a] declaratory judgment concerning real property titled in plaintiff’s name and to the, Water Rights, Hunting rights and BLM leases to be shown as Discovery unfolds; [b] injunction for Defendants to correct all mistakes concerning all real estate interests, water

rights, hunting rights and not limited to BLM Leases. Plaintiff is willing to be compensated at fair Market value as of approximately 2007 or 2008 all Plaintiff's interest have been depleted from her ownership to be shown as discovery unfolds.” (Id.)

33. In approximately July of 2007, Plaintiff contacted Clay Holbrook with questions regarding the sales of the two parcels and the distribution of the proceeds. (R. 247, 316).

34. In an effort to avoid litigation, Holbrook made a settlement offer to Plaintiff to resolve all claims and prepared a proposed settlement agreement. (R. 247, 316, 658).

35. Ms. Hampton did not agree to the proposed settlement agreement as prepared by Mr. Holbrook, but instead stated that she would only accept the amount offered by Mr. Holbrook as payment for the House Parcel, and that she intended to pursue the remaining claims pertaining to the Vacant Parcel. (R. 247, 316).

36. In her Third Amended Complaint, Plaintiff asserts that she entered into an agreement with Defendants whereby Defendants would purchase her interest in the House Parcel. (R. 136 at ¶ 31).

37. During the summary judgment hearing, Plaintiff stated that the intent of the alleged oral agreement was for Defendants to purchase her interest in the House Parcel:

THE COURT: Okay. What were the terms, do you believe?

MS. HAMPTON: The terms were to—I would relinquish my rights, basically, it was all stated on a document he typed up, everything was legit on August 27<sup>th</sup>, so all those terms in that August 27<sup>th</sup> disclaimer, I believe would be correct, to my belief, and it's all listed in the disclaimer. Those are the terms where I would relinquish my rights to the error of title of 6.31 acres for the value of—consideration of 21,185.47.

(R. 547 at page 22; *see* Addendum 9 at p. 144).



THE COURT: —there is a reasonable basis to find there is a disputed fact regarding the existence of an oral contract. And—and I'm looking to see what you believed the terms of the oral contract were and where that—where that document is—why you believe those terms are accurate, the basis for what you believe those terms are.

MS. HAMPTON: The basis, he agreed to pay the money to relinquish my rights of my titled ownership that the company erred in. I don't believe I have the—a document to show that at this time.

THE COURT: Okay. So, there's no document that shows what the terms of that agreement were; is that correct?

MS. HAMPTON: Not at this time—

(R. 547 at page 23; *see* Addendum 9 at p. 145).

THE COURT: Yeah. In other words, the terms of a contract would be, you know, the--the things that go to the heart of the agreement. In other words, there would be a payment, you allege, of twenty-one thousand some-odd dollars in exchange for what? What--what--what were the terms of the--of the oral agreement from your perspective?

MS. HAMPTON: He would pay me the \$21,185.47 to relinquish my rights to a deed of 6.32 acres. That was a discussion and an agreement we came to.

THE COURT: So, it was--it was totally to relinquish rights to a deed? That's all it was?

MS. HAMPTON: To relinquish my rights to a deed, one deed of 6.32 acres.

THE COURT: Okay. So, essentially, your oral agreement was the payment would be made to relinquish the rights in land. Is that what you're--

MS. HAMPTON: Yes.

THE COURT: --is that what you're telling me?

MS. HAMPTON: It was land, real property.

THE COURT: So, ma'am, is it your assertion that it was not in the nature of a settlement agreement?

MS. HAMPTON: No.

THE COURT: It was not in the nature of a settlement agreement?

MS. HAMPTON: No. The--

THE COURT: But rather was for payment for an interest in land. Is that what you're asserting? I want to make sure I understand this, ma'am.

MS. HAMPTON: Correct.

(R. 547 at pages 24-25; *see* Addendum 9 at pp. 146-147).

## V. SUMMARY OF ARGUMENTS

Although Defendants' Motion for Summary Judgment raised several legal theories, there is only one issue relevant to this appeal: whether the trial court properly granted Defendants' motion for summary judgment. Defendants assert that the trial court properly granted the motion.

First, the undisputed facts as presented by Defendants were not controverted by Plaintiff. The affidavit and documents presented by Plaintiff in her memorandum in opposition did not have any information sufficient to raise issues of fact. In her appellate brief, Plaintiff makes various arguments that the trial court did not allow her to present evidence. However, this matter was decided on summary judgment so Plaintiff had every opportunity to present evidence in her briefings and at the hearing on Defendants' motion. Plaintiff conducted significant discovery, but the documents and information presented in her opposition to Defendants' motion for summary judgment failed to create issues of fact. Accordingly, the facts presented by Defendants were undisputed by Plaintiff.

Second, the trial court was correct in ruling that Plaintiff's claims are barred by the doctrine of res judicata. The undisputed facts demonstrate that Plaintiff has filed several lawsuits pertaining to her ownership interest in the real properties at issue in this matter. Plaintiff brought the 1999 Suit, the 2002 Suit, the 2003 Suit, and the 2004 Suit against Kim Jensen alleging that Plaintiff owned interests in real property, and that Kim Jensen had "fraudulently" removed Plaintiff's name from the title to the properties. In those lawsuits, Plaintiff filed lis pendens against the same real property that is at issue in this

matter. The undisputed facts demonstrate that all of those cases were resolved against Plaintiff, with the trial courts ordering Plaintiff to release the lis pendens, and ruling that Plaintiff had no interest in those properties. Plaintiff brought this matter naming Defendants as parties rather than Kim Jensen, but her allegations are the same as the other lawsuits. Therefore, Plaintiff's claims are barred by res judicata.

Third, the trial court was correct in ruling that Plaintiff's claims are barred by the statute of limitations. The undisputed facts demonstrate that Plaintiff did not file her complaint against Defendants until August 14, 2007. However, Plaintiff was aware of the facts and circumstances pertaining to her allegations beginning as early as the 1999 Suit. Defendants acted as closing agent for the transaction that took place in January, 2002. After the transaction closed, Defendants wrote a check to the attorneys for Plaintiff and Kim Jensen for the amount of the final proceeds resulting from the transaction. After that point, Defendants had no further involvement. Plaintiff then brought lawsuits in 2002, 2003, and 2004, raising the same allegations that have been brought in this matter. Therefore, it is apparent that Plaintiff had knowledge of the facts and circumstances underlying her allegations, and the statute of limitations on her claims ran well before August, 2007, when she filed her action against Defendants. Accordingly, Plaintiff's claims are barred by the applicable statutes of limitations.

Fourth, Plaintiff's claims of an oral agreement are barred by the statute of frauds. In her Third Amended Complaint, Plaintiff asserted that the alleged oral agreement was intended to "relinquish [her] rights" in the House Parcel. At the hearing on Defendants' motion for summary judgment, Plaintiff clarified that the oral agreement was for

Defendants to purchase her interest in the House Parcel, yet she also admitted that there was no written agreement, and she presented no signed, written agreement together with her opposition to Defendants' motion for summary judgment. Accordingly, because Plaintiff has asserted an oral agreement for the purchase of an interest in real property, her claims based upon the alleged oral agreement are barred by the statute of frauds.

## **VI. ARGUMENT – THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS**

The trial court properly granted summary judgment in favor of Defendants, as Plaintiff did not dispute Defendants' statements of fact, and the undisputed facts demonstrate that Defendants were entitled to judgment as a matter of law. The facts of the case and the law are clear that Plaintiffs' claims are barred due to res judicata, the statute of limitations, and the statute of frauds.

### **A. Plaintiff failed to dispute Defendants' statement of facts**

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c) U.R.C.P. "When the moving party has presented evidence sufficient to support a judgment in its favor, and the opposing party fails to submit contrary evidence, a trial court is justified in concluding that no genuine issue of fact is present or would be at trial." *Smith v. Four Corners Mental Health Center, Inc.*, 2003 UT 23, ¶ 40, 70 P.3d 904 (quoting *Amica Mut. Ins. Co. v. Schettler*,

768 P.2d 950, 957 (Utah Ct.App.1989)). Finally, “An affidavit that merely reflects the affiant's unsubstantiated opinions and conclusions is insufficient to create an issue of fact.” *Id.* at ¶ 50 (quoting *Dairy Prod. Servs. v. City of Wellsville*, 2000 UT 81 at ¶ 54, 13 P.3d 581).

The Utah Rules of Civil Procedure require that in opposing a motion for summary judgment, “[f]or each of the moving party’s facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials.” Rule 7(c)(3)(B) U.R.C.P.. Plaintiff’s memorandum in opposition to Defendants’ motion for summary judgment failed to controvert any of Defendants’ statements of fact. (R. 377-400; *see* Addendum 7 and 8 at pp. 105-130). In opposing Defendants’ motion, Plaintiff did not respond to any of Defendants’ facts, but instead, she only discussed unsubstantiated allegations. Although Plaintiff identifies documents that supposedly support her allegations, there is no indication in any of the documents provided by Plaintiff that she disputed any facts raised by Defendants. The issues presented by Defendants pertained to res judicata and the statutes of limitations. The facts (or allegations) raised by Plaintiff were not relevant to the issues raised by Defendants, and would have no bearing on the decision by the Court. Therefore, Defendants’ statement of facts were undisputed by Plaintiff.

In the Brief of Appellant, Plaintiff summarily asserts that “the evidence does not support the court’s ruling that [of] res judicata,” and the “court improperly prevented Plaintiff’s evidence of fraud issues.” *See* Brief of Appellant at page 12, items I.A. and I.D. In another part of her brief, Plaintiff states, “Had the court simply allowed Plaintiff

to introduce her evidence to this case [sic] would have clearly been in Plaintiffs [sic] favor and exposed Defendants' misleading intent." *See* Brief of Appellant at page 10. However, Plaintiff makes those statements without providing any supporting arguments or citations to the record. She does not indicate what evidence she was prevented from introducing, or even what evidence supports her allegations of fraud.

The proceeding below was a motion for summary judgment. The record demonstrates that Plaintiff conducted significant discovery and Defendants produced hundreds of pages of documents in response to Plaintiff's discovery. Defendants brought a motion for summary judgment, and Plaintiff had every opportunity to present her evidence in her briefings in opposition to Defendants' motion and at the hearing. Plaintiff failed to dispute Defendants' statement of facts as presented in their motion for summary judgment, so it was appropriate for the trial court to make a ruling as a matter of law as to the issues presented by Defendants.

**B. The trial court properly granted summary judgment as to the issue of res judicata**

Res judicata encompasses two distinct doctrines: claim preclusion and issue preclusion. *Pride Stables v. Homestead Golf Club, Inc.*, 2003 UT App 411, ¶ 14, 82 P.3d 198. "[C]laim preclusion bars a party from prosecuting in a subsequent action a claim that has been fully litigated previously," and involves three elements:

First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.

*Id.* at ¶ 15 (quoting *Snyder v. Murray City Corp.*, 2003 UT 13, ¶ 34, 73 P.3d 325).

Defendants recognize that they were not parties to the previous suits filed by Tonda Hampton, so claim preclusion would not be applicable. However, the doctrine of issue preclusion does bar Plaintiff's claims.

Issue preclusion "arises from a different cause of action and prevents parties or their privies from relitigating facts and issues in the second suit that were fully litigated in the first suit." *Snyder v. Murray City Corp.*, 2003 UT 13, ¶ 35, 73 P.3d 325 (quoting *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, ¶ 19, 16 P.3d 1214). Issue preclusion requires four elements:

(i) [T]he party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication; (ii) the issue decided in the prior adjudication must be identical to the one presented in the instant action; (iii) the issue in the first action must have been completely, fully, and fairly litigated; and (iv) the first suit must have resulted in a final judgment on the merits.

*Id.* (quoting *Collins v. Sandy City Bd. of Adjustment*, 2002 UT 77, ¶ 12, 52 P.3d 1267).

Plaintiff filed four separate and distinct lawsuits for the purpose of adjudicating title to the properties at question in this suit: the 1999 Suit (*see supra* Section IV. Statement of the Facts (hereafter "Facts" or "Fact") 1-5, 30(a)), the 2002 Suit (*see* Facts 20-22, 30(b, d); *see* Addendum 5 at p. 90), the 2003 Suit (*see* Facts 23-24, 30(c-d); *see* Addendum 5 at p. 93), and the 2004 Suit (*see* Facts 25-31; *see* Addendum 5 at p. 65). Therefore, the first element is met, as Plaintiff was the same party in the prior suits.

In each of the aforementioned suits, Plaintiff brought claims asserting her interest in the real properties at issue in this case. *See id.* Specifically, Plaintiff filed *lis pendens*

in the 1999 Suit, the 2002 Suit, and the 2003 Suit. *See id.*; *see also* Addendum 2. The issues in this case are identical to the issues in the prior cases: Plaintiff is asserting that she has a right in or title to various parcels of real property. Although in the prior cases she was asserting the claim against a different party, it is evident that she lost those cases, and so is trying to find a new party against whom to bring her grievances. However, the issues are identical, so the second element of issue preclusion is met.

The previous suits were completely, fairly, and fully litigated. The dockets and the pleadings of the prior cases demonstrate that Plaintiff was represented by various attorneys, filed several motions, and had every opportunity to present her case to the Court. *See generally* Facts 1-6, 20-31.

Finally, the previous suits resulted in final judgments on the merits. The first was the Stipulated Order from the 1999 Suit entered on January 23, 2002. *See* Fact 4; *see* Addendum 3. In the Stipulated Order, the parties agreed, and the Court ordered, that the properties would be sold and the proceeds would be put in escrow. *See* Facts 4-6. Defendant Professional Title Services was retained to conduct the closing, and on January 29, 2002, Defendant transmitted the proceeds to the attorneys for Kim Jensen and Tonda Hampton. *See* Facts 7-19. Accordingly, Defendants complied with their obligations, and the proceeds were distributed directly to Plaintiff's counsel. Plaintiff's remaining claims to the other parcels of property were dismissed by a final order of the Court, wherein the Court found that Plaintiff and Kim Jensen did not have a common law marriage, and therefore ordered the lis pendens filed in the 1999 Suit to be released. *See*



Fact No. 30(a); *see* Addendum 5 at pp. 80-89. Therefore, Plaintiff's claims in the 1999 Suit were fully adjudicated.

The claims in the other suits were also fully adjudicated. The 2002 Suit and the 2003 Suit ended with a final order of the Court dismissing Plaintiff's property claims and ordering the lis pendens to be released. *See* Fact 30(d); *see* Addendum 5 at p. 96. The 2004 Suit also resulted in a final order on the merits, once again dismissing Plaintiff's claims wherein she asserted an interest in the property through a partnership agreement. *See* Fact 31; *see* Addendum 6 at p. 100. Accordingly, the fourth element of issue preclusion is met, as Plaintiff's claims in the prior suits all resulted in final judgments on the merits.

Plaintiff has already attempted, multiple times, to claim an interest in the real properties that are the subject of this suit. Each time, a judgment was entered against Plaintiff, or Plaintiff's claims were dismissed on the merits. Plaintiff's suits against Kim Jensen have failed, and she has sued these Defendants to attempt to find a party to pay her for property that the Seventh District Court has already declared never belonged to her. Accordingly, Plaintiff's claims have already been fully litigated in previous suits, and the trial court properly granted summary judgment in favor of Defendants on the ground that Plaintiff's claims are barred due to the doctrine of res judicata.

**C. The trial court properly granted summary judgment as to the issue of the statute of limitations**

Plaintiff's Third Amended Complaint brings causes of action for declaratory judgment, breach of contract, breach of covenant of good faith and fair dealing, slander

of title, negligence, and fraud. The statute of limitations for fraud claims is three years from the discovery of the fraud. *See* Utah Code Ann. § 78B-2-305(3). The statute of limitation is four years for all other claims raised by Plaintiff. *See* Utah Code Ann. § 78B-2-307 (“An action may be brought within four years . . . for relief not otherwise provided for by law.”).

The undisputed facts demonstrate that Plaintiff filed suit against Kim Jensen on November 10, 1999, and recorded a lis pendens against the parcels of real property at issue in this matter as early as November 15, 1999. *See* Facts 1-3. The properties at issue were sold on January 25, 2002 (with Defendants acting as the closing agent for that transaction), and Defendants distributed the proceeds of the sale to counsel for Plaintiff on January 29, 2002. *See* Facts 6-18. Accordingly, Plaintiff or her counsel were involved in litigation asserting an interest in title to the parcels of real property, and when they were sold, the proceeds were distributed to Plaintiff’s attorney on January 29, 2002. Therefore, any cause of action regarding title to the real properties, and Defendants’ involvement in the sale of those properties, began to run at the latest on January 29, 2002. Because the statute of limitations on all actions other than fraud is 4 years, (and the statute of limitations for fraud is only 3 years), the statute of limitations on Plaintiff’s claims expired in January, 2006. Plaintiff did not file her initial complaint in this matter until August, 2007. *See* Fact 32. Accordingly, Plaintiff filed her complaint after the statute of limitations had run, and Plaintiff’s claims are barred.

In the Brief of Appellant, Plaintiff has argued that the “fraudulent concealment” doctrine prevented the running and expiration of the statutes of limitations. *See* Brief of

Appellant at 11-13. As a general rule, a statute of limitations begins to run “upon the happening of the last event necessary to complete the cause of action.” *Colosimo v. Roman Catholic Bishop*, 2007 UT 25, ¶ 14, 156 P.3d 806 (quoting *Russell Packard Dev., Inc. v. Carson*, 2005 UT 14, ¶ 20, 108 P.3d 741). An exception to that general rule is the discovery rule, which operates to toll a statute of limitation “until the discovery of facts forming the basis for the cause of action.” *Id.* at ¶ 15 (quoting *Carson*, 2005 UT 14, ¶ 21, 108 P.3d 741). The discovery rule only applies if “provided for by statute (the ‘statutory discovery rule’)” or “when required by equity (the ‘equitable discovery rule’).” *Id.* The equitable discovery rule may be applied “when either exceptional circumstances or the defendant’s fraudulent concealment prevents the plaintiff from timely filing suit.” *Id.*

In the *Colosimo* case, the Supreme Court clarified the knowledge requirement in the context of the discovery rule:

A plaintiff is deemed to have discovered his action when he has actual knowledge of the fraud “or by reasonable diligence and inquiry should know, the relevant facts of the fraud perpetrated against him.” We have particularly emphasized the importance of the diligence requirement, stating that “[a] party who has opportunity of knowing the facts constituting the alleged fraud cannot be inactive and afterwards allege a want of knowledge” and that “[a] party is required to make inquiry if his findings would prompt further investigation.” In other words, if a party has knowledge of some underlying facts, then that party must reasonably investigate potential causes of action because the limitations period will run.

*Id.* at ¶ 17 (quoting *Baldwin v. Burton*, 850 P.2d 1188, 1196 (Utah 1993)). In this case, it is not necessary to discuss whether the statutory discovery rule or the equitable discovery rule apply, because the allegations and pleadings filed by Plaintiff in conjunction with the

2002 Suit, the 2003 Suit, and the 2004 Suit clearly demonstrate that Plaintiff had knowledge of the facts underlying the alleged fraud when she filed those suits.

In conjunction with the 2002 Suit, Plaintiff executed and caused to be recorded a lis pendens on December 19, 2002. *See* Fact 21 (R. 329-331; *see* Addendum 2 at p. 51). On the 2002 lis pendens, Plaintiff states, “During this case, a Lis Pendens need [sic] to be in place. To protect the Real Estate involved. Respondent [Kim Jensen] has been depleting, hiding, transferring, out of Petitioners [sic] name, Fraudulently.” Fact 22 (R. 331; *see* Addendum 2 at p. 53). Therefore, as early as December 19, 2002, Plaintiff asserted that properties were being fraudulently transferred out of her name. Those are the same allegations, and pertain to the same parcels of property, that are at issue in this matter. The facts also demonstrate that Plaintiff raised those same issues in the 2003 Suit and the 2004 Suit. *See* Facts 23-31.

The undisputed facts demonstrate that Plaintiff had knowledge of the facts underlying the alleged fraud as early as December 19, 2002, and the statute of limitations on all claims began to run at that time by at least that time (if not before), expiring well before August, 2007, when Plaintiff brought her complaint against Defendants. Therefore, because Plaintiff did not file her complaint against Defendants until August, 2007, the trial court properly granted summary judgment to Defendants on the issue of the statute of limitations.

**D. The trial court properly granted summary judgment as to the issue of the alleged oral agreement**

In her Third Amended Complaint, and at the hearing on Defendants' motion for summary judgment, Plaintiff asserted that the terms of the alleged oral agreement provided that Defendants would pay a sum of money to Plaintiff, in exchange for which Plaintiff would convey her interest in the House Parcel to Defendants. *See* Facts 33-37. An oral agreement for an interest in land is barred by the statute of frauds.

Utah Code Ann. § 25-5-1 provides as follows:

No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

Plaintiff's alleged oral agreement clearly falls within the statute of frauds.

Plaintiff asserted that Defendants agreed to purchase her interest in the House Parcel. An agreement of that nature is clearly an agreement for the purchase of an "interest in real property." Accordingly, because there is no writing, the agreement is barred pursuant to the statute of frauds, and the trial court properly granted Defendants' motion for summary judgment on the issue of Plaintiff's oral agreement.

**VII. CONCLUSION**

Defendants assert that the trial court properly granted summary judgment in favor of Defendants for the following reasons:

(A) Plaintiff failed to dispute Defendants' statement of facts; the documents and arguments presented by Plaintiff in her opposition did not create a material issue of fact, pertaining to res judicata, the statute of limitations, or the statute of frauds; because the proceeding before the trial court was a motion for summary judgment, Plaintiff had every opportunity to present evidence in opposition to Defendants' motion, therefore her arguments that the trial judge "prevented testimony" is not correct;

(B) Plaintiff's claims are barred by the doctrine of res judicata; Plaintiff brought several suits (in 1999, 2002, 2003, and 2004), asserting that she had wrongfully lost her interests in real property, and all those cases were decided on the merits against Plaintiff, so her claims are barred pursuant to res judicata;

(C) Plaintiff's claims are barred by the statutes of limitations; the previous suits filed by Plaintiff demonstrate that she had knowledge of the facts underlying her allegations in this action as early as December, 2002, so the statute of limitations ran by at least December, 2006, long before Plaintiff's complaint was filed in August, 2007;

(D) Plaintiff's allegation of an oral agreement is barred by the statute of frauds; Plaintiff asserted that Defendants had agreed to purchase her interest in the House Parcel, and such a verbal agreement for the purchase of an interest in land is clearly barred by the statute of frauds.

For all the foregoing reasons, Defendants request that this Court affirm the trial court's order granting summary judgment in favor of Defendants.

Dated this 13<sup>th</sup> day of April, 2010

**HIRSCHI STEELE & BAER, PLLC**

/s/ Justin R. Baer  
Justin R. Baer  
Attorneys for Defendants/Appellees

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of April, 2010, I caused a true and correct copy of the foregoing **APPELLEES' BRIEF** to be mailed via First Class U.S. Mail, to the following:

Tonda Lynn Hampton  
P.O. Box 586  
Price, UT 84501

/s/ Justin R. Baer

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IN THE COURT OF APPEALS  
STATE OF UTAH

---

TONDA LYNN HAMPTON,

Plaintiff and Appellant,

vs.

PROFESSIONAL TITLE SERVICES; and  
CLAY G. HOLBROOK,

Defendants and Appellees.

**ADDENDUM TO  
APPELLEES' BRIEF**

Appellate No. 20090942-CA

Civil No. 070700813  
Judge Douglas B. Thomas

Tonda Lynn Hampton  
P.O. Box 586  
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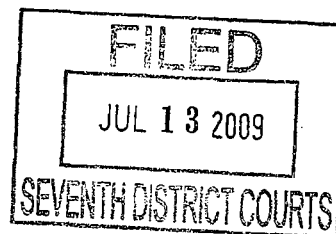
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## **ADDENDUM 1**

Statement of Undisputed Facts  
from Defendants' Memorandum in Support of Summary Judgment

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IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR CARBON COUNTY, STATE OF UTAH

---

TONDA LYNN HAMPTON,

Plaintiff,

vs.

PROFESSIONAL TITLE SERVICES, *et al.*,

Defendants.

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Case No.: 070700813

Judge: Douglas B. Thomas

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Defendants Professional Title Services and Clay Holbrook, by and through their attorneys, pursuant to Rule 7 U.R.C.P., hereby submit their Memorandum in Support of their Motion for Summary Judgment.

**I. INTRODUCTION**

Plaintiff has brought this matter asserting that she should be compensated for the alleged loss of real property. She asserts that Defendants were involved in the transfers of the property out of her name, and that Defendants are therefore liable for fraud, negligence, slander of title,

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and other causes of action. However, the facts of this case demonstrate that Plaintiff has already adjudicated the status of the title to the real property at issue, and this Court has already decided this issue against Plaintiff.

In 1999, Plaintiff sued Kim Jensen, asserting that a common law marriage existed. In conjunction with the lawsuit, Plaintiff filed various lis pendens and amended lis pendens against more than 4,000 acres of real property, many of which Plaintiff has asserted are now at issue in this case. In the course of the lawsuit filed in 1999, Plaintiff and Kim Jensen were ordered to sell multiple parcels of the property at issue. Defendants were retained to act as closing and escrow agent for the transactions. At the completion of the transactions, Defendants transmitted the proceeds to the attorneys for Kim Jensen and for Plaintiff. Therefore, Defendants fulfilled their duties, and the facts clearly demonstrate that Defendants provided the funds from the transactions to Plaintiff's counsel, jointly with the counsel for Kim Jensen.

Ultimately, the Court dismissed Plaintiff's 1999 lawsuit, finding that a common law marriage did not exist, and the Court ordered Plaintiff to release the lis pendens that had been filed. However, that did not satisfy Plaintiff, and she filed another lawsuit in 2002, and a third lawsuit in 2003. In conjunction with both suits, she filed more lis pendens, asserting that she was entitled to title of the real property at issue. Those two cases were consolidated, and in a ruling in April, 2003, this Court entered another order dismissing Plaintiff's claims, and ordering the lis pendens to be released. However, Plaintiff filed another lawsuit in 2004, which was also dismissed by this Court.

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Having had all her complaints against Kim Jensen dismissed, Plaintiff has now filed this action against these Defendants, but her causes of action have not changed. She continues to assert that she is entitled to ownership of the parcels of real property that were at issue in the previous suits. The facts of this case demonstrate that Plaintiff has wrongfully abused the judicial process, and not only should her complaint be dismissed, but the Court should award these Defendants their attorney's fees for Plaintiff's bad faith in bringing this action.

## **II. STATEMENT OF UNDISPUTED FACTS**

For the purposes of Defendants' Motion for Summary Judgment only, Defendant asserts that the following facts are undisputed:

1. Plaintiff filed a lawsuit against Kim C. Jensen in this Court on November 10, 1999, case number 994700340 (referred to hereafter as the "1999 Suit."). The docket is attached hereto as Exhibit A.

2. Although Defendants have attempted to obtain copies of the pleadings in the 1999 Suit, Plaintiff does not have copies and the Court has destroyed its file. *See* Plaintiff's Responses to Defendants' Requests for Production, attached hereto as Exhibit B.

3. In conjunction with the 1999 Suit, Plaintiff recorded several lis pendens against parcels of real property, as follows:

- a. Recorded on November 15, 1999, in the Carbon County Recorder's Office, as Entry No. 77489, against approximately 4,078.61 acres of real property, attached hereto as Exhibit C;

- b. Recorded on February 4, 2000, in the Carbon County Recorder's Office, as Entry No. 78686, against two parcels of property, together with all rights of access, grazing rights, and water rights, attached hereto as Exhibit D;
- c. Recorded on March 31, 2000, in the Carbon County Recorder's Office, as Entry No. 79477, against two parcels of property, together with all rights of access, grazing rights, and water rights, attached hereto as Exhibit E;
- d. Recorded on March 31, 2000, in the Carbon County Recorder's Office, as Entry No. 79478, against approximately 4,078.61 acres of real property, attached hereto as Exhibit F.

4. The lis pendens attached as Exhibits E and F appear to be amendments to those lis pendens attached hereto as Exhibits D and C, respectively. *Compare* Exhibits C, D, E, and F.

5. The lis pendens attached as Exhibits E and F specifically state, "The Petitioner claims marital interest or a partnership interest in the above-described lands, this being the object of the action." *See* Exhibit E at page 2; *see also* Exhibit F at page 3.

6. In a Stipulated Order of this Court dated January 23, 2002, entered on that date in the 1999 Suit, the Court ordered that the lis pendens be released as to two separate parcels: (1) the Ghost Town Guest Ranch Lodge, consisting of approximately 6.37 acres (also identified as Parcel No. 9 on the lis pendens attached as Exhibit F) (hereafter referred to as "House Parcel"); (2) a total of 675 acres west of Helper, Utah (also identified as Parcel No. 10 and portions of Parcel No. 8 on the lis pendens attached as Exhibit F) (hereafter referred to as "Vacant Parcel."). *See* Stipulated Order, attached hereto as Exhibit G, at pages 3 to 4.

7. The Stipulated Order of the 1999 Suit provided that the lis pendens was to remain in effect with respect to the remainder of the property. *See* Stipulated Order (Exhibit G) at page 5.

8. The Stipulated Order also ordered that the two parcels be sold, and that the proceeds from the sale be deposited into an interest bearing trust account, set up by the attorneys for Tonda Hampton and Kim Jensen, which funds were to be distributed by further order from the Court or as the parties might agree. *See* Stipulated Order (Exhibit G) at 5, ¶ 8.

9. Defendant Professional Title Services was retained as the closing and escrow agent for the sales of the two parcels. *See* Affidavit of Clay G. Holbrook ("Holbrook Aff."), attached hereto as Exhibit H.

10. At the time Professional Title Services became involved, the Home Parcel was under contract to sell to Leo Foy and Clayton Foy for \$200,000.00. *Id.*

11. The Vacant Parcel was also under contract to sell to Leo Foy and Clayton Foy, for a price of \$135,000.00. *Id.*

12. Professional Title Services had no involvement in the negotiation of the two contracts, but was only involved to act as closing and escrow agent for the transaction. *Id.*

13. The two transactions took approximately two months from when Professional Title Services was retained until the transactions closed in January, 2002. During that time period, Defendant Clay Holbrook ("Holbrook"), the President of Professional Title Services, was in communication with Richard Golden, the attorney for Kim Jensen, and Douglas Stowell, the attorney for Tonda Hampton. *Id.*

14. Holbrook was informed by both Richard Golden and Douglas Stowell that the parties had agreed to escrow the proceeds from the sales, and that the parties' agreement would be entered as an order of the Court. *Id.*

15. The transactions both closed on January 25, 2002. The settlement statement for the House Parcel is attached to Holbrook's Affidavit as Exhibit 1. The settlement statement for the Vacant Parcel is attached to Holbrook's Affidavit as Exhibit 2.

16. The settlement statement for the House Parcel shows that the proceeds from the sale, after deducting payments for loans and other costs, were \$42,060.94. *See* Holbrook Aff. at Exhibit 1.

17. The settlement statement for the Vacant Parcel shows that the proceeds from the sale, after deducting payments for loans and other costs, were \$40,466.15. *See id* at Exhibit 2.

18. After the transactions closed and the funds were received by Professional Title Services, Holbrook caused the proceeds to be distributed as required by the Court. *Id.*

19. The proceeds from the sale of the Vacant Parcel, in the amount of \$40,466.15, were distributed by way of a check from Professional Title Services to Richard R. Golden and Douglas Stowell, the attorneys for Kim Jensen and Tonda Hampton, dated January 29, 2002. A copy of the check from the bank is attached to Holbrook's Affidavit as Exhibit 3.

20. The proceeds from the sale of the House Parcel, in the amount of \$42,060.94, were distributed by way of a check from Professional Title Services to Richard R. Golden and Douglas Stowell, the attorneys for Kim Jensen and Tonda Hampton, dated January 29, 2002. A copy of the check from the bank is attached to Holbrook's Affidavit as Exhibit 4.



21. Professional Title Services was only retained to act as closing and escrow agent, and once the checks were issued to the two attorneys, neither Professional Title Services nor Clay Holbrook had further involvement. Neither Professional Title Services nor Clay Holbrook has any knowledge of what happened to the proceeds once the attorneys received them, or how the proceeds were distributed. *See Holbrook Aff.*

22. On December 13, 2002, Plaintiff filed another lawsuit against Kim Jensen and Double J. Triangle, LLC in this Court, case number 020701072 ("2002 Suit"). *See Docket*, attached hereto as Exhibit I.

23. Although Defendants have attempted to obtain copies of the pleadings filed in the 2002 Suit, Plaintiff does not have copies and the Court has destroyed its file. *See Plaintiff's Responses to Defendants' Requests for Production*, attached hereto as Exhibit B.

24. In conjunction with the 2002 Suit, Plaintiff recorded a lis pendens against many of the same parcels identified on the lis pendens attached as Exhibits E and F ("2002 Lis Pendens"). A copy of the 2002 Lis Pendens is attached hereto as Exhibit J.

25. The 2002 Lis Pendens is signed by Plaintiff, and states, "During this case, a Lis Pendens need [sic] to be in place. To protect the Real Estate involved. Respondent [Kim Jensen] has been depleting, hiding, transferring, out of Petitioners [sic] name, Fraudulently." *See Exhibit J at 3.*

26. On January 6, 2003, Plaintiff filed another lawsuit against Kim Jensen in this Court, case number 030700004 ("2003 Suit"). A copy of the docket is attached hereto as Exhibit K.

27. In conjunction with the 2003 suit, Plaintiff filed a lis pendens against many of the same properties identified in the lis pendens of the 1999 Suit. A copy of the 2003 Lis Pendens is attached hereto as Exhibit L.

28. On April 23, 2004, Plaintiff filed another lawsuit against Kim Jensen in this Court, as case number 040700256 ("2004 Suit"). A copy of Plaintiff's Complaint is attached hereto as Exhibit M.

29. In the 2004 Suit, Plaintiff names Kim Jensen and Richard Golden, a former attorney of Kim Jensen, as defendants. *See* Exhibit M.

30. In the 2004 Suit, Plaintiff alleged that an "Interest Bearing Trust Account" was established, and cited the Stipulated Order entered in the 1999 Suit on January 23, 2002 (which Stipulated Order is attached hereto as Exhibit G). *See* Exhibit M at ¶ 4. Plaintiff also alleged that the "trust account no longer exists." *Id.* at ¶ 6.

31. Also in the 2004 Suit, Plaintiff alleged that Kim Jensen "has now sold all of our other Carbon County Real estate," and "Defendants True Records will show that Petitioner [Tonda Hampton] has never given any oral or written document to allow any ownership change on approx. 4,000 acre[s, w]hich are at issue." *Id.* at ¶¶ 8-10.

32. In response to Plaintiff's complaint filed in the 2004 suit, Kim Jensen filed a motion to dismiss, and a memorandum in support. The motion and memorandum, along with all attachments, are attached hereto as Exhibit N.

33. The motion to dismiss and memorandum in support asserted the defense of res judicata, and set forth the history of Plaintiff's various lawsuits filed against Kim Jensen. *See*

Exhibit N. The memorandum contains as exhibits various court pleadings that have since been destroyed by the Court:

- a. Exhibit I is the Order, Findings, and Conclusions for the 1999 Case, holding that Tonda Hampton and Kim Jensen did not have a common law marriage, dismissing the 1999 Suit with prejudice, and ordering the lis pendens filed by Tonda Hampton against all real property to be released;
- b. Exhibit II is the complaint in the 2002 Suit, containing allegations that the real property should be divided;
- c. Exhibit III is the complaint in the 2003 Suit, alleging that Kim Jensen had “sold and hidden” real property, and asking the Court to “reverse ownership” of the real property and other assets;
- d. Exhibit IV is a ruling in the 2002 Suit and the 2003 Suit (which cases were apparently consolidated), dismissing the claims pertaining to the real property, and ordering the lis pendens filed by Plaintiff to be released.

34. In response to the motion to dismiss of the 2004 Suit, the Court granted the motion, and entered an order on September 13, 2006, dismissing the 2004 Suit on the ground that the 2004 Suit was barred due to the doctrine of res judicata (“2004 Order”). The 2004 Order is attached hereto as Exhibit O.

35. Plaintiff filed this action against these Defendants on August 14, 2007. *See* case docket. Plaintiff filed her Third Amended Complaint on November 5, 2008, bringing allegations regarding the real property that was litigated in the 1999 Suit, the 2002 Suit, the 2003 Suit, and

the 2004 Suit. Plaintiff's requested relief asks for, "[a] declaratory judgment concerning real property titled in plaintiff name and to the, Water Rights, Hunting rights and BLM leases to be shown as Discovery unfolds; [b] injunction for Defendants' to correct all mistakes concerning all real estate interest, water rights, hunting rights and not limited to BLM Leases. Plaintiff is willing to be compensate at fair Market value as of approximately 2007 or 2008 all Plaintiff's interest have been depleted from her ownership to be shown as discovery unfolds." *See* Plaintiff's Third Amended Complaint at 13.

36. In approximately July of 2007, Plaintiff contacted Clay Holbrook with questions regarding the sales of the two parcels and the distribution of the proceeds. After some written and verbal correspondence with Ms. Hampton, Mr. Holbrook learned of the complaint that had been filed in this matter in August, 2007. *See* Holbrook Aff.

37. In an effort to avoid litigation, Holbrook made a settlement offer to Plaintiff to resolve all claims, and prepared a proposed settlement agreement, a copy of which is attached to Holbrook's Affidavit as Exhibit 5.

38. Although the settlement offer was intended to resolve all claims, Ms. Hampton stated that she would only accept that amount as payment for the House Parcel, and that she intended to pursue the remaining claims pertaining to the Vacant Parcel. *See* Holbrook Aff.

39. Because Ms. Hampton would not accept the offer as full resolution of all claims in this suit, the settlement was not completed. *See* Holbrook Aff.

## **ADDENDUM 2**

Lis Pendens Recorded by Plaintiff

JOHN E. SCHINDLER [3619]  
Attorney for Petitioner  
80 West Main, Suite 201  
Price, Utah 84501  
Telephone: (435) 637-1783  
FAX: (435) 637-5269

000774-89 BK00445 Pg00753-00755

SHARON MURDOCK - COUNTY OF CARBON  
1999 NOV 15 16:56 PM FEE \$52.00 BY  
REQUEST: SCHINDLER, JOHN E

IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON JENSEN,

Petitioner,

vs.

KIM C. JENSEN,

Respondent.

**LIS PENDENS**

Civil No.: 994700340

Judge: Bruce K. Halliday

NOTICE IS HEREBY GIVEN that on or about the 10<sup>th</sup> day of November, 1999, suit  
was commenced in the District Court for Carbon County, State of Utah, involving the  
above-named parties and the real properties described below, situated in Carbon County,  
State of Utah:

**Parcel No. 1, SN - 2A0807-001 (40 acres):**

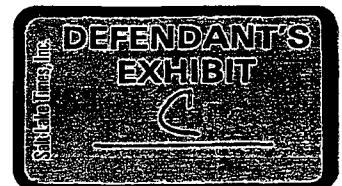
SE 1/4 SE 1/4 SEC. 2, T13S, R8E, SLM.

**Parcel No. 2 - SN - 2A-0826 (80 acres)**

SE4NE4, NE4NE4 OF SEC 11, T13S, R8E, SLM

**Parcel No. 3 - SN 2A-0827 (200 acres):**

N 1/2 SW 1/4, NW 1/4 SE 1/4, SW 1/4 NE 1/4, SE 1/4 NW  
1/4, SEC 12, T13S, R8E, SLM



**Parcel No. 4 - SN 2A-0831 (428.31 acres):**

S2S2, N2N2, NE4SE4, N 990 FT OF SE4NE4, SW4NW4 OF  
SEC 12, T13S, R8E, SLM. LESS 1.69 AC FOR RR R/W

**Parcel No. 5 - SN 2A-0807 (480.29 acres):**

NW4 & S2 OF SEC 1, T13S, R8E, SLM.

**Parcel No. 6 - SN 2A-0808 (639.90 Acres):**

ALL OF SEC 3, T13S, R8E, SLM

**Parcel No. 7 - SN 2A-0809 (200 acres):**

SE4, SE4NE4 OF SEC 4, T13S, R8E, SLM.

**Parcel No. 8 - SN 2A-1036 (543.47 acres):**

1. LOTS 1, 2, 3, 4; E2W2; W2NE4; SE4 OF SEC 7, T13S, R9E
2. SLM. ALSO, BEG 875 FT N & 825 FT W OF SE COR OF LOT
3. 2, N 39°30' W 70 FT; N 40° E 75 FT; S 39°30' E 70 FT; S 40° W
4. 75 FT TO BEG. LESS 58 FT X 71 FT. LESS D & RG R/W
5. LESS, BEG 460 FT E OF SW COR OF SEC; N 78° 268.4 FT; N
6. 12° W 278 FT; S 85° W 95 FT; S TO PT 115.2 FT N OF S LINE;
7. S 78° W 127.5 FT; S 12° E 90 FT TO BEG. LESS PARCELS
8. DESC IN QCD BK 15 PG 627-10. 638. Less 21-1-36-1 (6.32  
ac)

**Parcel No. 9 - SN 2A-1036-01 (6.32 acres):**

1. BEG 250 FT N OF SE COR OF SW4NE4 OF SEC 7, T13S,
2. R9E, SLB&M; N 550 FT; W 550 FT; S 385 FT M/L TO N'LY
3. LINE OF D&RGW RR R/W; E'LY ALG. N'LY R/W 325 FT
4. M/L TO PT LYING W 220 FT M/L FROM PT OF BEG; E
5. 220 FT M/L TO PT OF BEG.

**Parcel No. 10 - SN 2A-1060-002 (428.96 acres):**

LOTS 1, 2, 3 & 4; E2SW4; E2NW4; W2NE4; NW4 SE4 OF  
SEC 18, T13S, R9E, SLB&H. LESS RR R/W

00077489 Bk00445 Pg00755

Parcel No. 11 - SN 2A-1057-002 (40 acres):

SW 1/4 SW 1/4, SEC 8, T13S, R9E, SLM

Parcel No. 12 - SN 2A-1031-004 (344.91 acres):

1. LOTS 5, 6, 7, E2SW4, SW4SE4 OF SEC 6, T13S, R9E,
2. SLB&H. ALSO, THOSE PORTIONS OF SE4SE4, NE4SE4,
3. SW4NE4, & SE4NW4 LYING SW'LY OF FOLLOWING
4. BNDRY LINE BEG AT A PT HALFWAY BETWEEN NE
5. COR OF SE4SE4 & SE COR OF SE4SE4, NW'LY ON A
6. LINE INTERSECTING CENTER OF SUBDIVISION
7. BNDRY'S THRU WHICH IT PASSES TO CENT OF N LINE
8. OF SE4NW4.


Parcel No. 13 - SN 2A-0310 (485.12 acres):

S 1/2 OF N 1/2; N 1/2 OF S 1/2; LOTS 1, 2, 3, 4; SEC 35, T12S,  
R8E, SLM

Parcel No. 14 - SN 2A-307 (161.33 Acres):

LOTS 1, 2; N 1/4 OF SE 1/4, SEC 34, T12S, R8E SLM

DATED this 15 day of NOV, 1999.

  
JOHN E. SCHINDLER  
Attorney for Petitioner

myfiles\jensen\Tonda\Lisa\Penders\mo



JOHN E. SCHINDLER [3619]  
Attorney for Petitioner  
80 West Main, Suite 201  
Price, Utah 84501  
Telephone: (435) 637-1783  
FAX: (435) 637-5269.

00078686 Bk00449 Pg00739-00740

SHARON MURDOCK - COUNTY OF CARBON  
2000 FEB 04 13:01 PM FEE \$15.00 BY  
REQUEST: SAMUEL CHIARA

IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON JENSEN,

Petitioner,

vs.

KIM C. JENSEN,

Respondent.

LIS PENDENS

Civil No.: 994700340

Judge: Bruce K. Halliday

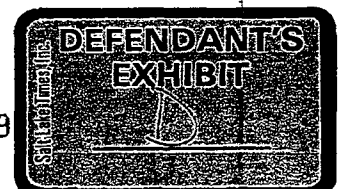
NOTICE IS HEREBY GIVEN that on or about the 10<sup>th</sup> day of November, 1999, suit was commenced in the District Court for Carbon County, State of Utah, involving the above-named parties and the real properties described below, situated in Carbon County, State of Utah:

Parcel No. 1, 00061313 Bk00392 Pg00787-00787

Township 13 South, Range 8 East, salt Lake Base and Meridian:

21-837 Section 12: SE 1/4 NW 1/4; SW 1/4 NE 1/4; N 1/2 SW 1/4; NW 1/4 SE 1/4

TOGETHER with all rights of access, grazing rights, or any other rights which may be associated with or appurtenant to said lands.



TOGETHER with all water and water rights appurtenant to, or in use on, said lands, including, but not limited to, water rights no. 91-3887 and 91-3643.

SUBJECT to current general taxes, reservations, restrictions and easements existing or of record.

GRANTORS WARRANT that there has been no conveyance or granting by them of any rights of access or ingress and egress across, or associated with, said lands.

Parcel No. 2 - 00061314 Bk00392 Pg00788-00788

Township 13 South, Range 8 East, Salt Lake Base and Meridian:

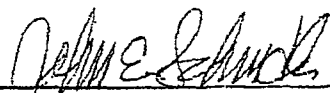
Section 12: SE 1/4 NW 1/4; SW 1/4 NE 1/4; N 1/2 SW 1/4; NW 1/4 SE 1/4

TOGETHER with all rights of access, grazing rights, or any other rights which may be associated with or appurtenant to said lands.

TOGETHER with all water and water rights appurtenant to, or in use on, said lands, including, but not limited to, water rights no. 91-328, 91-29, 91-3887, 91-3690, 91-3643 and 91-107.

TOGETHER with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto now or hereafter used or enjoyed with said property, or any part thereof.

DATED this 3 day of Feb, 2000.

  
JOHN E. SCHINDLER  
Attorney for Petitioner

myfiles\JensenTonda\LisPendens 3

E 079477 B 452 P 461  
Date 31-MAR-2000 1:23pm  
Fee: 14.00 Check  
SHARON MURDOCK, Recorder  
Filed By JB  
For SAMUEL P CHIARA  
CARBON COUNTY CORPORATION

Samuel P. Chiara #7829  
Attorney at Law  
98 North 400 East  
P. O. Box 955  
Price, UT 84501  
Telephone: (435) 637-7011  
Fax: (435) 636-0138  
Attorney for Petitioner

IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON JENSEN,  
Petitioner,

LIS PENDENS

vs.

Civil No.: 994700340

KIM C. JENSEN,

Judge: Scott N. Johansen

Respondent.

NOTICE IS HEREBY GIVEN that on or about the 10<sup>th</sup> day of November, 1999,  
suit was commenced in the District Court for Carbon County, State of Utah, involving the  
above-named parties and the real properties described below, situated in Carbon County,  
State of Utah:

Parcel No. 1: 00061313 Bk00392 Pg00787-00787

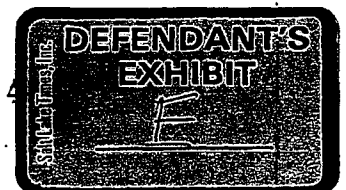
Township 13 South, Range 8 East, Salt Lake Base and Meridian:

JA-827

Section 12: SE ¼ NW ¼; SW ¼ NE ¼; N ½ SW ¼; NW ¼ SE ¼

TOGETHER with all rights of access, grazing rights, or any other  
rights which may be associated with or appurtenant to said lands.

TOGETHER with all water and water rights appurtenant to, or in  
use on, said lands, including, but not limited to, water rights no.  
91-3387 and 91-3643.



PTS000459

SUBJECT to current general taxes, reservations, restrictions and easements existing or of record.

GRANTORS WARRANT that there has been no conveyance or granting by them of any rights of access or ingress and egress across, or associated with, said lands.

Parcel No. 2: 00061314 Bk00392 Pg00788-00788.

Township 13 South, Range 8 East, Salt Lake Base and Meridian:

Section 12: SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ; SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ; N  $\frac{1}{2}$  SW  $\frac{1}{4}$ ; NW  $\frac{1}{4}$  SE  $\frac{1}{4}$

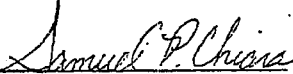
TOGETHER with all rights of access, grazing rights, or any other rights which may be associated with or appurtenant to said lands.

TOGETHER with all water and water rights appurtenant to, or in use on, said lands, including, but not limited to, water rights no. 91-328, 91-29, 91-3887, 91-3690, 91-3643 and 91-107.

TOGETHER with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto now or hereafter used or enjoyed with said property, or any part thereof.

The Petitioner claims marital interest or a partnership interest in the above-described lands, this being the object of the action.

DATED this 31 day of March, 2000.

  
Samuel P. Chisra  
Attorney for Petitioner

2

E 079477 B 452 P 462

PTS000460

Samuel P. Chiara #7829  
Attorney at Law  
98 North 400 East  
P. O. Box 955  
Price, UT 84501  
Telephone: (435) 637-7011  
Fax: (435) 636-0138  
Attorney for Petitioner

E 079478 B 452 P 463  
Date 31-MAR-2000 1:23pm  
Fee: 51.00 Check  
SHARON MURDOCK, Recorder  
Filed By JB  
For SAMUEL P. CHIARA  
CARBON COUNTY CORPORATION

IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON JENSEN,

Petitioner,

vs.

KIM C. JENSEN,

Respondent.

LIS PENDENS

Civil No.: 994700340

Judge: Scott N. Johansen

NOTICE IS HEREBY GIVEN that on or about the 10<sup>th</sup> day of November, 1999, suit was commenced in the District Court for Carbon County, State of Utah, involving the above-named parties and the real properties described below, situated in Carbon County, State of Utah:

Parcel No. 1: SN - 2A0807-001 (40 acres):

SE ¼ SE ¼ SEC. 2, T13S, R8E, SLM.

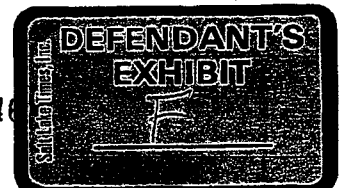
Parcel No. 2 - SN - 2A-0826 (80 acres):

SE4NE4, NE4NE4 of SEC 11, T13S, R8E, SLM.

Parcel No. 3 - SN 2A-0827 (200 acres):

N ½ SW ¼, NW ¼ SE ¼, SW ¼ NE ¼, SE ¼ NW ¼, SEC 12,  
T13S, R8E, SLM.

Parcel No. 4 - SN 2A-0831 (428.31 acres):



PTS000461

S2S2, N2N2, NE4SE4, N 990 FT OF SE4NE4, SW4NW4 OF  
SEC 12, T13S, R8E, SLM. LESS 1.69 AC FOR RR R/W.

Parcel No. 5 - SN 2A-0807 (480.29 acres):

NW4 & S2 of SEC 1, T13S, R8E, SLM.

Parcel No. 6 - SN 21-0808 (639.90 acres):

ALL OF SEC 3, T13S, R8E, SLM.

Parcel No. 7 - SN 2A-809 (200 acres):

SE4, SE4NE4 OF SEC 4, T13S, R8E, SLM.

Parcel No. 8 - SN 2A-1036 (543.47 acres):

1. LOTS 1, 2, 3, 4; E2W2; W2NE4; SE4 OF SEC 7, T13S, R9E
2. SLM. ALSO, BEG 875 FT N & 825 FT W OF SE COR OF LOT
3. 2, N 39°30' W 70 FT; N 40° E 75 FT; S 39°30' E 70 FT; S 40° W
4. 75 FT TO BEG. LESS 58 FT X 71 FT. LESS D & RG R/W
5. LESS, BEG 460 FT E OF SW COR OF SEC; N 78° 268.4 FT; N
6. 12° W 278 FT; S 85° W 95 FT; S TO PT 115.2 FT N OF S LINE;
7. S 78° W 127.5 FT; S 12° E 90 FT TO BEG. LESS PARCELS
8. DESC IN QCD BK 15 PG 627-10. 638. Less 21-1-36-1 (632  
ac)

Parcel No. 9 - SN 2A-1036-01 96.32 acres):

1. BEG 250 FT N OF SE COR OF SW4NE4 OF SEC 7, T13S
2. R9E, SLB&M; N 550 FT; W 550 FT; S 385 FT M/L TO N'LY
3. LINE OF D&RGW RR R/W; E'LY ALG. N'LY R/W 325 FT
4. M/L TO PT LYING W 220 FT M/L FROM PT OF BEG; E
5. 220 FT M/L TO PT OF BEG.

Parcel No. 10 - SN 2A-1060-002 (428.96 acres):

LOTS 1, 2, 3 & 4; E2SW4; E2NW4; W2NE4 NW4 SE4 OF  
SEC 18, T13S, R9E, SLB&M. LESS RR R/W

Parcel No. 11 - SN 2A-1057-002 (40 acres):

SW ¼ SW ¼, SEC 8, T13S, R9E, SLM

Parcel No. 12 - SN 2A-1031-004 (344.91 acres):

1. LOTS 5, 6, 7, E2SW4, SW4SE4 OF SEC 6, T13S, R9E,
2. SLB&M. ALSO, THOSE PORTIONS OF SE4SE4, NE4SE4,
3. SW4NE4, & SE4NW4 LYING SW'LY OF FOLLOWING
4. BNDRY LINE BEG AT A PT HALFWAY BETWEEN NE
5. COR OF SE4SE4 & SE COR OF SE4SE4, NW'LY ON A
6. LINE INTERSECTING CENTER OF SUBDIVISION
7. BNDRY'S THRU WHICH IT PASSES TO CENT OF N LINE
8. OF SE4NW4.

Parcel No. 13 - SN 2A-0310 (485.12 acres):

S ½ OF N ½; N ½ OF S ½; LOTS 1, 2, 3, 4; SEC 35, T12S,  
R8E, SLM.

Parcel No. 14 - SN 2A-307 (161.33 acres):

LOTS 1, 2; N ½ OF SE ¼, SEC 34, T12S, R8E SLM.

The Petitioner claims marital interest or a partnership interest in the above-described lands, this being the object of the action.

DATED this 31 day of March, 2000.

Samuel P. Chiara  
Samuel P. Chiara  
Attorney for Petitioner

Divorce/Tonda Jensen Lit Pending2.doc.

Tonda Lynn Hampton  
Petitioner  
Resident of Carbon County  
Price, Utah 84501  
Telephone: (435) 637-0201

E 095749 B 520 P 332  
Date 19-DEC-2002 9:12am  
Fee: 55.00 Cash  
SHARON MURDOCK, Recorder  
Filed By KR  
For TONDA LYNN HAMPTON  
CARBON COUNTY CORPORATION

IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
CARBON COUNTY, STATE OF UTAH

Tonda Lynn Hampton  
Petitioner,

Lis Pendens

vs.

Civil No.: 020701072

KIM C. JENSEN, OWNER OF  
DOUBLE J. TRIANGLE, LLC.  
Respondent

Judge: Bryner, Bryce K.

NOTICE IS HEREBY GIVEN that the above mentioned names have had a Partnership, involving Real Property, and that the Petitioner would like to dissolve all involve, and split all assets, Real Property, and income from any and all businesses.

Parcel : 2A-0307-0000 Entry : 015384  
Lots 1;2;N 1/2 of SE 1/4; SEC 34, T12S, R8E, SLM 161.33 AC  
Parcel : 2A-0310-0000 Entry :  
S 1/2 of N 1/2; N 1/2 of S 1/2; Lots 1;2;3;4; SEC 35, T12S, R8E, SLM 485.12 AC  
Parcel : 2A-0807-0000 Entry : 077487  
NW4 & S2 OF SEC 1, T13S, R8E, SLM 480.29 AC  
parcel : 2A-0807-0001 Entry : 015605  
SE 1/4 SE 1/4 SEC. 2, T13S, R8E, SLM 40.00 AC  
parcel : 2A-0808-0000 Entry : 077487  
ALL OF SEC. 3, T13S, R8E, SLM 639.90 AC  
parcel : 2A-0809-0000 Entry : 045678  
SE4; SE4NE4 OF SEC. 4, T13S, R8E, SLM 200.00 AC  
parcel : 2A-0826-0000 Entry : 000008  
SE4NE4, NE4NE4 OF SEC 11, T13S, R8E, SLM 80.00 AC  
parcel : 2A-0829-0001 Entry : 077487  
SW4NW4, NE4NW4; SEC 12, T13S, R8E, SLB&M 141.22 AC  
parcel : 2A-0831-0000 Entry : 008370



PTS000504



S2S2; NW4NW4; NE4SE4. SEC 12, T13S, R8E, SLB&M. 280.87 AC

parcel : 2A-1031-0004 Entry : 072274

LOTS 5,6,7, E2SW4, SW4SE4 OF SEC 6, T13S, R9E, SLB&M. ALSO, THOSE PORTIONS OF SE 4SE4, NE4SE4, NW4SE4, SW4NE4, & SE4NW4 LYING SW'LY OF FOLLOWING BNDRY LINE: BEG AT A PT HALFWAY BETWEEN NE COR OF SE4SE4 & SE COR OF SE4SE4, NW'LY ON A LINE INT ERSECTING CENTER OF SUBDIVISION BNDRY'S THRU WHICH IT PASSES TO CENT OF N LINE OF SE4NW4. 344.91 AC

parcel : 2A-1036-0000 Entry : 065999

LOTS 1, 2, E/2NW4; W2NE4 SEC 7, T13S, R9E, SLBM. LESS 2A-1036-2 (7.32 AC) LESS PORTION S OF D&RGW RR R/W LESS PC 50 X 1750 TO CARBON CO. LESS 2A-1052 (.09 AC). 271.14 AC. 01/31/2002 04/29/2002

parcel : 2A-1057-0002 Entry : 075500

SW 1/4 SW 1/4, SEC 8, T13S, R9E, SLM. 40.00

parcel : 2A-0827-0000 Entry :

N 1/2 SW 1/4, NW 1/4 SE 1/4, SW 1/4 NE 1/4, SE 1/4 NW 1/4, SEC 12, T13S, R8E, SLM. 200.00 AC

parcel : 2A-1060-0002 Entry : 089829

LOTS 1,2,3,& 4; E2SW4; E2NW4; W2NE4; NW4SE4 OF SEC 18, T13S, R9E, SLB&M. LESS RR R/W. 428.96 AC

parcel : 2A-1036-0003 Entry : 089829

No Recorder Notes Entered

THAT PORTION OF LOTS 3&4; SE4SW4; NE4SW4; W2SE4; E2NW4; W2NE4 LYING SOUTH/SOUTHWESTERLY OF D&RGW RR R/W IN SEC 7, T13S, R9E, SLBM. 249.33 01/31/2002 04/29/2002

parcel : 2A-1036-0002 Entry : 089828

BEG SE COR SW4NE4 SEC 7, T13S,

1. Carbon County Real Property, in the name of DOUBLE J. TRIANGLE LLC, Kim C. Jensen, owner, also Property known as all of Spring Canyon Ranch, 6 miles west of Helper, Utah.

2. Summit County Real Property, 10acres approx. has been depleted and sold by the Respondent.

3. Assets,

a. 1999 Ford 350 Diesel Truck, DOUBLE J. TRIANGLE LLC. Kim C. Jensen owner.

b. Other assets amounting to over 200, 000.00 dollars, Respondent has been transferring and selling.

4. Business income,

a. Bed & Breakfast, known as Spring Canyon Ghost Town Guest Ranch, Inc. (Now, known as Double J. Triangle. LLC. Owner Kim C. Jensen.

5. Business,

a. CWMU Private Hunting Unit. Respondent has kept 100% of income at this time.

6. Cattle leases,

a. Respondent has kept all income at this time.

\* 7. Water Rights,

a. Now transferred into the Double J. Triangle LLC, owner Kim C. Jensen.

8. Any and all Trust accounts since 1983

9. BYU Property, located in Spring Canyon

10. Edward Evatz Property, located in Spring Canyon

E 095749 B 520 P 333

PTS000505

11. Kim Jensen Revokable Trust
12. AAA Enterprises, Triple A Entertainment, Cinderella's Escort Service, Glass Slipper
13. Kim C. Jensen Family Limited Partnership
14. Any and all other hidden accounts, companies, Trust notes.

Petitioner ask the Courts to bring this case forward and to resolve this dispute.

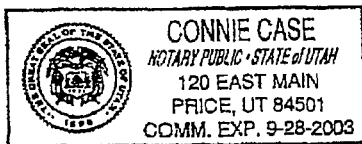
During this case, a Lis Pendens need to be in place. To protect the Real Estate involved. Respondent has been depleting, hiding, transferring, out of Petitioners name, Fraudulently.  
(Evidence exist).

*Tonda Lynn Hampton*

IN THE COUNTY OF CARBON, STATE OF UTAH, ON THIS 19TH DAY  
OF DECEMBER 2002, BEFORE ME, THE UNDERSIGNED NOTARY,  
PERSONALLY APPEARED TONDA LYNN HAMPTON WHO PROVED TO ME  
IDENTITY THROUGH DOCUMENTARY EVIDENCE IN THE FORM OF A  
UTAH DRIVERS LICENSE #147111801 TO BE THE PERSON WHO  
SIGNED THE PRECEDING DOCUMENT IN MY PRESENCE AND WHO  
AFFIRMED TO ME THAT THE SIGNATURE IS VOLUNTARY AND THE  
DOCUMENT TRUTHFUL.

*Connie Case*

NOTARY SIGNATURE AND SEAL



(3)

E 095749 B 520 P 334  
304 S

PTS000506

Tonda Lynn Hampton  
Petitioner  
Resident of Carbon County  
Price, Utah 84501  
Telephone: (435) 637-0201

E 095992 B 521 P 402  
Date 6-JAN-2003 9:46am  
Fee: 55.00 Cash  
SHARON MURDOCK, Recorder  
Filed By KR  
For TONDA HAMPTON  
CARBON COUNTY CORPORATION

IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
CARBON COUNTY, STATE OF UTAH

Tonda Lynn Hampton  
Petitioner,

Lis Pendens

vs.

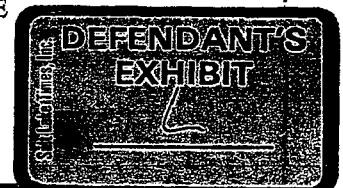
Civil No.: 030760004

KIM C. JENSEN, OWNER OF  
DOUBLE J. TRIANGLE, LLC.  
Respondent

Judge: Bryner

NOTICE IS HEREBY GIVEN that the above mentioned names have had a Partnership, involving Real Property, and that the Petitioner would like to dissolve all involve, and split all assets, Real Property, and income from any and all businesses.

Parcel : 2A-0307-0000 Entry : 015384  
Lots 1;2;N 1/2 of SE 1/4; SEC 34, T12S, R8E, SLM 161.33 AC  
Parcel : 2A-0310-0000 Entry :  
S 1/2 of N 1/2; N 1/2 of S 1/2; Lots 1;2;3;4; SEC 35, T12S, R8E, SLM 485.12 AC  
Parcel : 2A-0807-0000 Entry : 077487  
NW4 & S2 OF SEC 1, T13S, R8E, SLM 480.29 AC  
Parcel : 2A-0807-0001 Entry : 015605  
SE 1/4 SE 1/4 SEC. 2, T13S, R8E, SLM 40.00 AC  
Parcel : 2A-0808-0000 Entry : 077487  
ALL OF SEC. 3, T13S, R8E, SLM 639.90 AC  
Parcel : 2A-0809-0000 Entry : 045678  
SE4; SE4NE4 OF SEC. 4, T13S, R8E, SLM 200.00 AC  
Parcel : 2A-0826-0000 Entry : 000008  
SE4NE4, NE4NE4 OF SEC 11, T13S, R8E, SLM 80.00 AC  
Parcel : 2A-0829-0001 Entry : 077487  
SW4NW4, NE4NW4; SEC 12, T13S, R8E, SLB&M 141.22 AC  
Parcel : 2A-0831-0000 Entry : 008370  
S2S2; NW4NW4; NE4SE4. SEC 12, T13S, R8E, SLB&M 280.87 AC  
Parcel : 2A-1031-0004 Entry : 072274  
LOTS 5,6,7, E2SW4, SW4SE4 OF SEC 6, T13S, R9E, SLB&M. ALSO, THOSE



PTS0005071

PORTIONS OF SE 4SE4, NE4SE4, NW4SE4, SW4NE4, & SE4NW4 LYING SW'LY OF FOLLOWING BNDRY LINE: BEG AT A PT HALFWAY BETWEEN NE COR OF SE4SE4 & SE COR OF SE4SE4, NW'LY ON A LINE INTERSECTING CENTER OF SUBDIVISION BNDRY'S THRU WHICH IT PASSES TO CENT OF N LINE OF SE4NW4. 344.91 AC

Parcel : 2A-1036-0000 Entry : 065999

LOTS 1, 2, E/2NW4; W2NE4 SEC 7, T13S, R9E, SLBM LESS 2A-1036-2 (7.32 AC) LESS PORTION S OF D&RGW RR R/W LESS PC 50 X 1750 TO CARBON CO. LESS 2A-1052 (.09 AC). 271.14 AC. 01/31/2002 04/29/2002

Parcel : 2A-1057-0002 Entry : 075500

SW 1/4 SW 1/4, SEC 8, T13S, R9E, SLM. 40.00

Parcel : 2A-0827-0000 Entry :

N 1/2 SW 1/4, NW 1/4 SE 1/4, SW 1/4 NE 1/4, SE 1/4 NW 1/4, SEC 12, T13S, R8E, SLM. 200.00 AC

Parcel : 2A-1060-0002 Entry : 089829

LOTS 1,2,3,& 4; E2SW4; E2NW4; W2NE4; NW4SE4 OF SEC 18, T13S, R9E, SLB&M. LESS RR R/W. 428.96 AC

Parcel : 2A-1036-0003 Entry : 089829

No Recorder Notes Entered

THAT PORTION OF LOTS 3&4; SE4SW4; NE4SW4; W2SE4; E2NW4; W2NE4 LYING SOUTH/SOUTHWESTERLY OF D&RGW RR R/W IN SEC 7, T13S, R9E, SLBM. 249.33 01/31/2002 04/29/2002

Parcel : 2A-1036-0002 Entry : 089828

BEG SE COR SW4NE4 SEC 7, T13S, R9E, SLB&M; N 800 FT; W 550 FT; S 385 FT M/L TO N'LY LINE OF D&RGW RR R/W; E'LY & SE'LY ALNG SD R/W TO E LINE OF NW4SE4 OF SD SEC 7; N ALNG SD E LINE TO BEG. 7.32 AC 01/31/2002

Parcel : 1A-1358-0000 Entry : 082712

ALL OF LOTS 22, 29 & 30, BLOCK 1, PLAT A, SHEYA ADD TO HELPER. 0.34 AC

Parcel : 1A-1371-0000 Entry : 082712

ALL OF LOTS 12,13, & 14, BLOCK 2, PLAT A, SHEYA ADD TO HELPER. 0.34 AC

1. Carbon County Real Property, in the name of DOUBLE J. TRIANGLE LLC, Kim C. Jensen, owner, also Property known as all of Spring Canyon Ranch, 6 miles west of Helper, Utah.

2. Summit County Real Property, 10 acres approx. has been depleted and sold by the Respondent.

3. Assets,

a. 1999 Ford 350 Diesel Truck, DOUBLE J. TRIANGLE LLC. Kim C. Jensen owner.

b. Other assets amounting to over \$200,000.00 dollars, Respondent has been transferring and selling.

4. Business income,

a. Bed & Breakfast, known as Spring Canyon Ghost Town Guest Ranch, Inc. (Now, known as Double J. Triangle. LLC. Owner Kim C. Jensen.

5. Business,

a. CWMU Private Hunting Unit. Respondent has kept 100% of income at this time.

6. Cattle leases,

a. Respondent has kept all income at this time.

7. Water Rights,

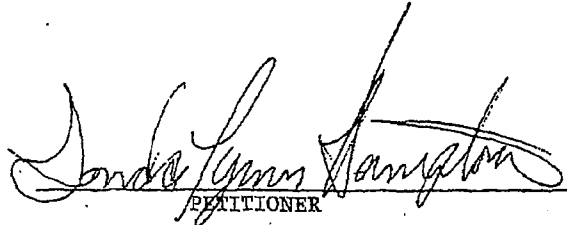
a. Now transferred into the Double J. Triangle LLC, owner Kim C. Jensen.

8. Any and all Trust accounts since 1983

E 095992 B 521 P 403

PTS000508

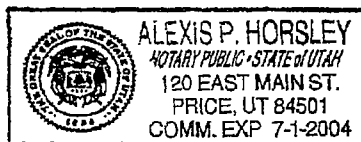
9. BYU Property, located in Spring Canyon
10. Edward Evatz Property, located in Spring Canyon
11. Kim Jensen Revokable Trust
12. AAA Enterprises, Triple A Entertainment, Cinderella's Escort Service, Glass Slipper
13. Kim C. Jensen Family Limited Partnership
14. Any and all other hidden accounts, companies, Trust notes.

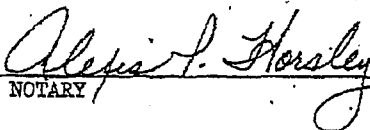
  
PETITIONER

Petitioner ask the Courts to bring this case forward and to resolve this dispute.

During this case, a Lis Pendens needs to be in place. To protect the Real Estate involved. Respondent has been depleting, hiding, transferring, out of Petitioners name, Fraudulently.  
(Evidence exists).

IN THE COUNTY OF CARBON, STATE OF UTAH, ON THIS 6th DAY OF JANUARY, 2003  
BEFORE ME, THE UNDERSIGNED NOTARY, PERSONALLY APPEARED TONDA LYNN HAMPTON  
WHO PROVED TO ME HER IDENTITY THROUGH DOCUMENTARY EVIDENCE IN THE FORM OF  
UTAH DRIVER LICENSE TO BE THE PERSON WHOSE NAME IS SIGNED ON THE PRECEDING  
DOCUMENT, AND ACKNOWLEDGED TO ME THAT SHE SIGNED IT VOLUNTARILY FOR ITS  
STATED PURPOSE.



  
NOTARY

E 095992 B 521 P 404

PTS000509

## **ADDENDUM 3**

Stipulated Order dated January 23, 2002

FILED

JAN 23 2002

SEVENTH DISTRICT COURTS

RICHARD R. GOLDEN - 5957  
McINTYRE & GOLDEN, L.C.  
Attorney for Respondent  
360 East 4500 South, Suite 3  
Salt Lake City, Utah 84107  
Telephone: (801) 266-3399

E-089841 B 495 P.167  
Date 30-JAN-2002 8:38am  
Fee: 69.00 Check  
SHARON MURDOCK, Recorder  
Filed By KR  
For PROFESSIONAL TITLE SERVICES  
CARBON COUNTY CORPORATION

IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR  
CARBON COUNTY, STATE OF UTAH

TONDA HAMPTON-JENSEN,

Petitioner,

vs.

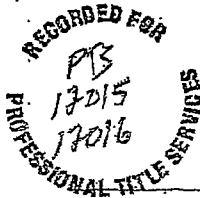
KIM C. JENSEN,

Respondent.

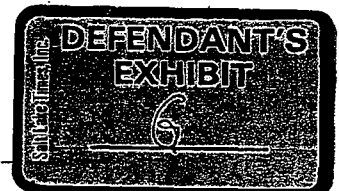
STIPULATED ORDER ON  
RESPONDENT'S MOTION TO LIFT HIS  
PENDENS ON PORTIONS OF  
PROPERTY AND APPROVE SALE  
CONDITIONS

Civil No. 994700340  
994700327

Judge Scott N. Johansen



This matter came on before the Court on December 7, 2001, as a telephonic hearing on Respondent's Ex Parte Motion to Lift Petitioner's Lis Pendens on Portions of Property and Approve Sale Conditions. Petitioner and her counsel, Douglas Stowell were present telephonically; Respondent's counsel, Richard Golden, was also present by telephone. The Court heard the arguments and proffers of counsel and has reviewed the files in this matter. Based thereon and being fully advised, the Court ruled Respondent's motion should be granted, that is the Petitioner's lis



PTS000481

pendens is to be lifted on the property subject to sale as ordered herein and that said property be sold in accordance with the terms referred to in Petitioner's motion.

Subsequently, that sale could not take place because of the buyers' inability to obtain an appraisal timely. As a result, the parties stipulated regarding a delayed closing date and other matters, and further agreed that the matter be combined with the Court's previous announcement of its order, all as follows:

1. It is in the best interests of the parties that the real property at issue in Respondent's motion be sold as requested by Respondent.
2. Petitioner's lis pendens on said property should be lifted in order to effectuate the sale of said property.
3. Respondent, through counsel, has represented to the Court that the sale is a bona fide, arm's-length transaction and that neither Respondent nor his counsel is retaining any interest in the property sold and further that there are no other agreements, written or oral, between Respondent or his attorney and the purchasers except those set forth in the real property purchase agreements.
4. Since hearing on this matter, a delay in closing has been requested by the buyers because they have been unable to find an appraiser in time to close by the December 20, 2001 date originally set. The parties, through counsel by their signatures approving this document have agreed that closing could be extended to on or before January 20, 2001.
5. Counsel for both parties, by approving this Order, represent to the Court that they do not specialize in real property transactions and that neither counsel makes any representations to the



Court, any party or any other person regarding the property descriptions in this Order; Rather the property descriptions herein are based solely on descriptions provided by the real estate brokers or title insurance companies, copies of which have been provided to the Court.

6. It is in the best interests of the parties that certain costs and expenses be paid out of the proceeds of said sale, with the remainder placed in an interest bearing trust account for further distribution as may be determined proper.

THEREFORE IT IS HEREBY ORDERED:

1. The parcels of real property on which Respondent proposes to lift Petitioner's lis pendens are:

(1) Ghost Town Guest Ranch Lodge and the 6.37 acres on which it is located; Tax ID #2A-1036-002, Carbon County, state of Utah.

and

(2) Approximately 675 Acres west of Helper, Utah: All of Carbon County tax ID #2A-1060-0002, containing 428.96 acres more or less. All of the property owned by Double J Triangle LLC which is in Carbon County Tax ID #2A-1038-0000 and is south of the D&G RRR/W except for that portion of the property that is in the east half of the south-east quarter of Section 7 T13S R9E, containing approximately 246 acres. These two parcels contain approximately 675 acres more or less.

2. Petitioner's lis pendens in the following described real property is hereby ordered released:

The real property to be sold is described as follows; 7500 West Spring Canyon Road, Helper, Utah 84526, more particularly described as follows:

BEGINNING at a point 250 feet North of the Southeast Corner of the Southwest Quarter of the Northeast Quarter of Section 7, Township 13 South, Range 9 East, Salt

Lake Base and Meridian, and running thence North 550 feet; thence West 500 feet; thence South 385 feet, more or less, to the Northerly line of the D. & R.G.W.R.R. right of way; thence Easterly along the said Northerly right-of-way line 325 feet, more or less, to a point lying West 220 feet, more or less, from the point of beginning; thence East 220 feet, more or less, to the point of beginning.

EXCEPTING therefrom all oil, gas and other minerals and mineral rights in and to said lands.

Situate in Carbon County, State of Utah. (Tax ID. # 2A-1036-002)

and:

THE SURFACE RIGHTS ONLY IN AND TO THE FOLLOWING DESCRIBED TRACTS OF LAND:

Township 13 South, Range 9 East, Salt Lake Base and Meridian:

Section 7: That portion of the following described tracts of land lying South/Southwesterly of the "Denver & Rio Grande Western Railroad right of way":

Lots 3 and 4; SE1/4 SW1/4; NE1/4 SW1/4; W1/2 SE1/4; E1/2 NW 1/4; W1/2 NE 1/4

Section 18: Lots 1, 2, 3 and 4; E1/2 SW1/4; E1/2 NW1/4; W1/2 NE1/4; NW1/4 SE1/4.

EXCEPTING from said lands the interests of the Denver and Rio Grande Western Railroad Company, acquired under that certain deed recorded December 20, 1926, in Book 5-L of Deeds at Page 199, as Entry No. 12912.

EXCEPTING from said lands all Railroad Rights-of Way.

(Tax ID #2A-1036 and 2A-1060-2)  
situate in Carbon County, State of Utah.

See Exhibit A, (Schedule A to commitment for title insurance).

In addition, two acre feet of water provided from other property owned by Double J Triangle is to be included in the sale.

3. The lis pendens is to remain in effect with respect to the remainder of the property.
4. Encumbrances on the real property at issue in this case should be paid<sup>he</sup> out of the proceeds of the sale, as should the costs and expenses of the sale, including moving costs to remove personal property, commissions and the costs of title insurance, if such any such costs are apportioned to the seller.
5. Specifically, the mortgage indebtedness to Zion's Bank on the property being sold is to be paid off by the proceeds of said sale.
6. Indebtedness to Ed Evatz on other portions of the Ranch property in the approximate amount of \$3,900.00 is also to be paid out of those proceeds.
7. The Guardian ad litem, Gene Byrge, should be paid \$4,000.00 out of the proceeds, which payment represents payment in full for Ms. Byrge's services involving the children and the parties which payment shall be deemed in satisfaction of her attorneys' lien previously filed.
8. The remaining proceeds are to be deposited into an interest bearing trust account, set up by counsel for both parties, with both signatures required for disbursements, which funds are to be distributed as the Court orders and as the parties may agree.
9. The closing electric bill on the Ranch should be paid, thereby allowing the buyers to continue electrical service. Counsel for the parties are directed to pay said bill after closing upon presentation of satisfactory evidence of the amount due.
10. Federal and state tax returns for the Double J Triangle LLC, which holds title on the real property, and the parties have been prepared by Van Tiendren and Associates which company

real property, and the parties have been prepared by Van Tiendren and Associates which company is owed \$2,000.00. Counsel for the parties are directed to pay the bill for those services after closing upon presentation of satisfactory evidence of the amount due.

11. Each of the parties shall be paid \$5000 from the proceeds without prejudice to either party's position in this case and further amounts may be available upon mutual agreement of the parties. Petitioner's \$5000 payment shall be paid to the offices of counsel for Petitioner. Respondent's \$5000 payment shall be available directly to Respondent.

12. The Court notes for the record that counsel for Petitioner has made every effort to review this Order with Petitioner, but counsel has been unable to reach Petitioner to receive her final approval. Counsel for Petitioner believes this Order reflects substantially all matters of an earlier version of this Order and on which Counsel received Petitioner's agreement. Counsel for Petitioner believes this Order reflects this Court's decision on the sale of the subject property and protects Petitioner's rights, but Counsel for Petitioner has been unable to receive Petitioner's final approval regarding this Order.

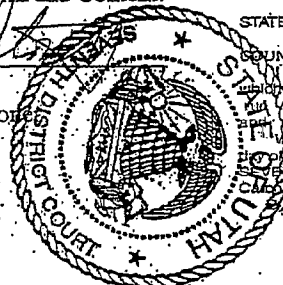
Dated this 23<sup>rd</sup> day of January, 2002.

BY THE COURT

Hon. Scott N. Johansen  
Seventh District Court Judge

Approved as to Form and Content:

Douglas Stovell  
Attorney for Petitioner



STATE OF UTAH )  
COUNTY OF CARBON )  
SS.

I hereby certify that the document  
which this certificate is attached is a  
true and correct copy of the original  
now in my custody.

WITNESS my hand and seal this 23<sup>rd</sup> day of January, 2002.

SEVENTH DISTRICT COURT  
Carbon County, Utah

Clary Depae



E 089841 B 495 P 172

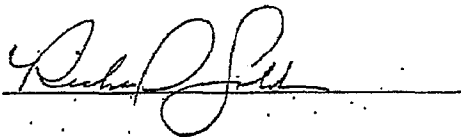


Richard R. Golden  
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I ~~mailed~~ <sup>hand delivered</sup> postage pre-paid, a true and correct copy of the foregoing  
ORDER ON RESPONDENT'S MOTION TO LIFT LIS PENDENS ON PORTIONS OF  
PROPERTY AND APPROVE SALE CONDITIONS to the following on this 18<sup>th</sup> day of

January, 2002.



Douglas L. Stowell  
307 East Stanton Avenue  
Salt Lake City, Utah 84111

A:\Order on Lis Pendens2.wpd

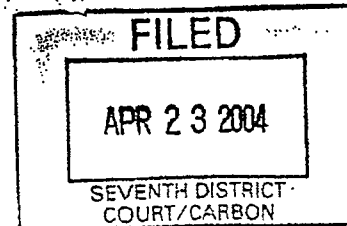
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PTS000487

## **ADDENDUM 4**

Complaint filed in 2004 by Plaintiff

Tonda Lynn Hampton  
Plaintiff/Prose  
Resident of Carbon County  
Price, Utah 84501  
Telephone: (435-637-0201)



IN THE SEVENTH DISTRICT COURT  
IN AND FOR CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON  
Plaintiff,

COMPLAINT:

Breach of Fiduciary Duty

vs

KIM C. JENSEN / RICHARD GOLDEN  
Defendant.

Case No. 040700256

*Halliday*

FOR CAUSE OF ACTION AGAINST THE DEFENDANT;

1. I, Plaintiff, am a resident of Carbon County
2. Plaintiff and Defendant are property owners in Carbon County.
3. Defendant's true address is unknown.
4. Plaintiff/Beneficiary and Defendant have an "Interest Bearing Trust Account" together; that require parties to agree and two signatures to release any monies.  
(Trust created in approx. January 2002: "Golden Trust Account"; notation; Richard Golden is one of the Defendants attorney's, both creators' of mentioned Trust. Quote defendants; "There are no other agreements, oral or written, between either of them" stated on Jan. 23<sup>rd</sup>, 2002 court order).
5. I, Plaintiff, on information and belief, allege that the Defendant is Breach of Fiduciary Duty.
6. The trust account no longer exists.
7. Defendant no longer obtains this attorney in question.



PTS-000973

8. I believe my Joint Partner/Defendant has now sold all of our other Carbon County Real estate, as of approx. 2004; once deeded, in both of Plaintiff's and Defendants names approx. 3200 acres that description listed in a Wild Life Division Easement Sale.

9. Record will show that, somehow, a Limited Liability Company sold our Real estate interest.

10. Defendants True Records will show that Petitioner has never given any oral or written document to allow any ownership change on approx. 4,000 acre. Which are at issue.

11. Petitioner is filing a Complaint within Jurisdiction.

12. There are court orders from previous cases# 994700340 and # 994700327 involving a  
a. Protective Order and,  
b. Civil Action: Common Law Marriage  
c. Lis Pendens filed on Nov. 15<sup>th</sup>, 1999 to Dec. 17<sup>th</sup>, 2002 in the case numbers mentioned.

13. Which Real estate mentioned; owned by the Petitioner and the Defendant Jointly and under one or the other name is given Lis Pendens protection during the action; and,

14. Dec. 31<sup>st</sup> 2001 due to a decision; Court Bifurcate the property issues at that time.

13. As of Aug.26<sup>th</sup> 2002, Trial; dismissed the Common Law Action.

14. Aug. Trial released a lis Pendens off of the mentioned Property as of Dec. 17<sup>th</sup> 2002.

15. Dec. 18<sup>th</sup>, 2002, Defendant has an Easement Sale Contract. (\$600,000.00)

16. Jan. 23<sup>rd</sup>, 2002 order is at issue.  
(Jan.23<sup>rd</sup>, of 2002, court order: Refer to attached document).

I, Petitioner, move the court to make and enter an Order, on the defendant to hand over all "True to Record" documentation involving the Real estate purchases between the Parties, Transfers, Real estate sales agreements, and not limited to the Interest Bearing Trust Account that I believe transferred with out my authorization.



Petitioner seeks immediate attention in the above.

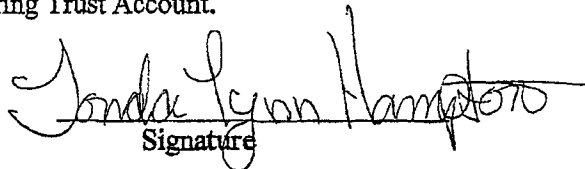
- a. Defendant is avoiding all certified mailing to all nine addresses known to Petitioner.
- b. The Limited Liability Company addresses also avoid all certified mailing.  
(True Record; Agent/Owner of the LLC Company is the Defendant as of approx. Aug. 2003).
- c. As of this time, Defendant has not contacted Plaintiff at all by phone:
- d. Defendant has phone number, given by Petitioner to his previous Paternity Attorney in 2003.

Plaintiff seeks full recovery of all her losses, due to any unacceptable behavior.

All monies that are or been generated from the Real estate ground to be reimbursed.

1. Cattle leases, owned by the Parties to this date,
2. CWMU Private Hunting Unit, voucher sales, and not limited to,
3. Water rights, which Plaintiff and Defendant owned as of 2004.
4. All land sales that went into the Interest Bearing Trust Account.

Dated on this date of.  
April 23<sup>rd</sup>, 2004

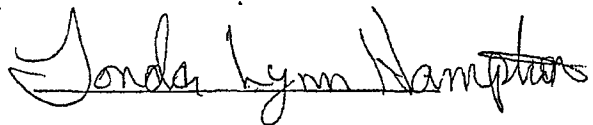
  
Signature

#### Certificate of Mailing

I hereby certify that on April 23<sup>rd</sup>, 2004, I mailed by certified mailing a true and correct copy of the foregoing COMPLAINT to the following:

Address:  
Double J. Triangle, LLC  
P.O. Box 415  
Helper Utah, 84526

Address: PMB 169, 2274 South, 1300 East,  
STE G-15  
Salt Lake City, Utah 84106

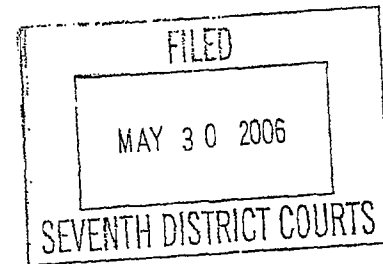
  
Plaintiff

## **ADDENDUM 5**

Motion to Dismiss, filed by Kim Jensen in the 2004 Suit, including as attachments:

- (a) Order disposing of the 1999 Suit;
- (b) Findings and Conclusions in the 1999 Suit;
- (c) Complaint filed by Plaintiff in the 2002 Suit;
- (d) Complaint filed by Plaintiff in the 2003 Suit;
- (e) Order and Judgment disposing of the 2002 and 2003 Suits.

RONALD H. GOODMAN -- #3650  
Attorney for Defendant  
8 North Center Street, P. O. Box 727  
American Fork, UT 84003-0727  
Telephone: (801) 756-3576  
Facsimile: (801) 756-3578



**IN THE SEVENTH JUDICIAL DISTRICT COURT OF CARBON COUNTY**

**STATE OF UTAH**

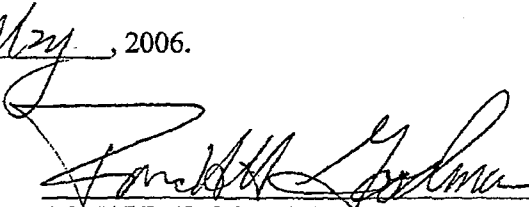
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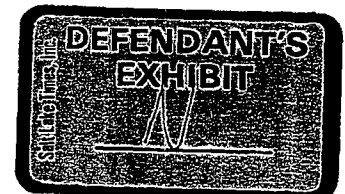
TONDA LYNN HAMPTON,	:	
	:	<b>MOTION TO DISMISS</b>
Plaintiff,	:	
	:	
vs.	:	
	:	
KIM C. JENSEN,	:	Case No.. 040700256
	:	
Defendant.	:	Judge Bruce Halliday

---

COMES NOW the Defendant, Kim C. Jensen, by and through his attorney, Ronald H. Goodman, and moves for dismissal of Plaintiff's Complaint against Defendant. Defendant relies upon the doctrine of Res Judicata as alleged in his Answer, and alleges that Plaintiff's claims have already been adjudicated by this Court. This Motion to Dismiss is supported by Defendant's Memorandum in Support of Motion to Dismiss filed contemporaneously with this Motion.

Dated this 26 day of May, 2006.

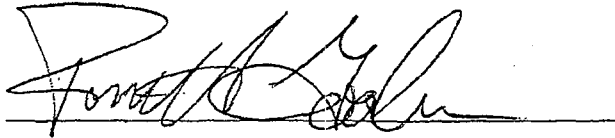
  
RONALD H. GOODMAN  
Attorney for Defendant

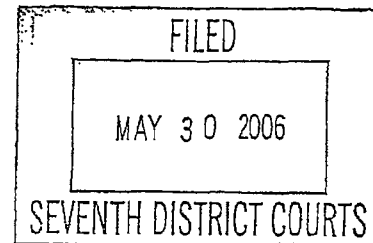


PTS-000824

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing postage prepaid in the U.S. Mail this 26 day of May, 2006, to Tonda Lynn Hampton, Plaintiff, P. O. Box 586 Price, Utah 84501.

A handwritten signature in dark ink, appearing to read "Tonda Lynn Hampton", is written over a horizontal line.



RONALD H. GOODMAN -- #3650  
Attorney for Defendant  
8 North Center Street, P. O. Box 727  
American Fork, UT 84003-0727  
Telephone: (801) 756-3576  
Facsimile: (801) 756-3578

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF CARBON COUNTY**

**STATE OF UTAH**

---

TONDA LYNN HAMPTON,	:	MEMORANDUM IN SUPPORT OF
Plaintiff,	:	MOTION TO DISMISS
vs.	:	
KIM C. JENSEN,	:	Case No.. 040700256
Defendant.	:	Judge Bruce Halliday

---

COMES NOW the Defendant, Kim C. Jensen, by and through his attorney, Ronald H. Goodman, and submits the following Memorandum in Support of Motion to Dismiss.

**FACTS**

1. Plaintiff's Complaint filed in this Court in Case No. 994700340 asking for a determination of a common-law marriage and for a Decree of Divorce was dismissed on December 12, 2006, because the Court found that there had been no common-law marriage between the parties. See the Order and Findings and Conclusions attached as Exhibit I and incorporated herein by this reference.

2. On December 13, 2002, Plaintiff filed in this Court in Case No. 020701072 a

Complaint against Defendant alleging a partnership existed between the parties, requesting the dissolution of the partnership and splitting of all assets, real property and income. Specifically, the Complaint listed assets of cattle leases, CWMU Private Hunting Unit, water rights, and real property, as well as "any and all Trust accounts since 1983." See the Complaint attached as Exhibit II and incorporated herein by this reference.

3. On January 6, 2003, Plaintiff filed in this Court in Case No. 030700004 a Complaint against Defendant alleging again a partnership between the parties, and among other things, fraud on Defendant's part. Again, Plaintiff asked the Court to recover on personal assets and real property, again listing cattle leases, CWMU Private Hunting Unit, water rights, and any and all Trust accounts since 1983. See the Complaint attached as Exhibit III and incorporated herein by this reference.

4. On April 25, 2003, the Honorable Bryce K. Bryner entered his "Ruling on Motion to Dismiss Motion for Judgment on the Pleadings, Motion for Summary Judgment, Motion to Release Lis Pendens" concerning both Case nos. 020701072 and 030700004. Judge Bryner's Ruling in effect dismissed all of Plaintiff's claims for fraud, loss of business and partnership claims and released the Lis Pendens filed against Defendant's real property.. See Judge Bryner's Ruling on Motion to Dismiss, Motion for Judgment on the Pleadings, Motion for Summary Judgment, Motion to Release Lis Pendens attached as Exhibit IV and incorporated herein by this reference.

5. In the Complaint filed by Plaintiff in this case presently before the Court, Plaintiff

has alleged breach of fiduciary duty regarding an alleged trust account created in January, 2002, again naming Defendant as a Partner (paragraph 8), and claiming that Defendant sold Plaintiff and Defendant's real estate without her permission. Again, in this Complaint, Plaintiff is asking for recovery for cattle leases, CWMU Private Hunting Unit, water rights and real property sales.

6. Defendant has filed an Answer in this matter alleging the affirmative defense of Res Judicata.

#### ARGUMENT

#### POINT I THE DOCTRINE OF RES JUDICATA ACTS AS A COMPLETE BAR TO PLAINTIFF'S CLAIMS BECAUSE THEY HAVE ALREADY BEEN ADJUDICATED BY THIS COURT.

Black's Law Dictionary, Centennial Edition (1891-1991), gives the following definition of Res Judicata:

*A matter adjudged; a thing acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. And to be applicable, requires identity in thing sued for as well as identity of cause of action, of persons and parties to action, and of quality in persons for or against whom claim is made. The sum and substance of the whole rule is that a matter once judicially decided is finally decided.*

In the case before the Court, Defendant submits that Plaintiff's claims have already been decided by this Court. Plaintiff's present Complaint is a poorly disguised attempt to bring before the Court claims which this Court has already denied her. The Court's decision from the

common-law marriage claim (Case no. 994700340) denied Plaintiff's claims for a marriage and for her interest in Defendant's real property. The trust account alleged by Plaintiff to have been created in January, 2002, would have been at issue during the "common-law marriage" case because that case was not decided until August 26, 2002, and Findings, Conclusions and Order did not enter until December 12, 2002. Therefore, the Court's decision in that matter acts as Res Judicata to Plaintiff's claims made in this case.

Undaunted by the Court's decision in Case no. 994400340, Plaintiff's two Complaints filed within twenty (20) days of each other (Case No. 020701072 filed on December 17, 2006, and Case No. 030700004 filed on January 6, 2003) appear to have been filed by Plaintiff to try again to take Defendant's assets and tie up the sale of his real property. Judge Bryner's decision effectively squelched those meritless claims, and acts as Res Judicata to Plaintiff's claims in this case as well.

It is interesting to note that Plaintiff in each of her three (3) subsequent Complaints to Case No. 994700340, has asked for recovery against Defendant's cattle leases, CWMU Private Hunting Unit, water rights, and real property. Also, in each subsequent Complaint, trust accounts have been alleged. This third Complaint should be dealt with by dismissal as well.

If the trust account alleged in this Complaint was actually created in January, 2002, the issue should have been decided by the Court's December 17, 2002 decision in Case No. 994700340.

The Utah Court of Appeals decision in *Copper State Thrift and Loan v. Bruno*, 735



P2d 387 (Utah App. 1987) is instructive regarding this case. It states the following at page 389:

*The doctrine of res judicata has two related but distinct branches. Both branches, however, have the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation. Penrod v. Nu Creation Creme, Inc. 669 P2d 873, 874-75 (Utah 1983); see generally Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 328-329, 91 S. Ct. 1434, 1442-1443, 28 L. Ed.2d 788 (1971)*

*One branch, claim preclusion, bars the relitigation of a claim that previously has been fully litigated between the same parties. To invoke this branch of res judicata, both suits must involve the same parties or their privies and the same claim or cause of action. Furthermore, the first claim must have been litigated on the merits and must have resulted in a final judgment. Penrod, 669 P2d at 875. In such a case, claim preclusion prevents relitigation not only of claims actually litigated in the first proceeding, but also claims which could and should have been litigated in the prior action, but were not raised. (Emphasis added).*

Plaintiff's trust account claim in this case could and should have been raised in Case No. 994700327. That case was decided against Plaintiff. Plaintiff included in her Complaints in Case Nos. 020701072 and 030700004 "any and all trust accounts since 1983." Those cases were decided against Plaintiff

The matters before the Court in Plaintiff's Complaint herein have already been judicially decided, and Plaintiff is not entitled to another "bite of the apple." The doctrine of Res Judicata bars Plaintiff's claims.

CONCLUSION

Base upon the foregoing, Defendant respectfully requests that Plaintiff's Complaint  
be dismissed

Dated this 26 day of May, 2006.



RONALD H. GOODMAN  
Attorney for Defendant

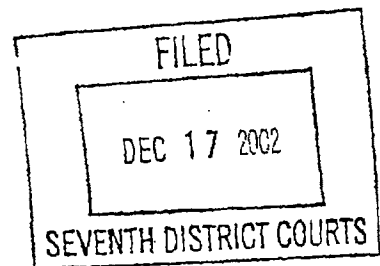
CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing postage prepaid in the U.S. Mail this 26 day of May, 2006, to Tonda Lynn Hampton, Plaintiff, P. O. Box 586 Price, Utah 84501.

  
\_\_\_\_\_

# EXHIBIT I

Steven Kuhnhausen (1861)  
Attorney for Respondent  
10 West Broadway  
Suite 603  
Salt Lake City, Utah 84101  
Telephone: (801) 322-1555



IN THE SEVENTH DISTRICT COURT  
IN AND FOR CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON JENSEN

Petitioner.

vs

KIM C. JENSEN

Respondent.

ORDER

Civil No. 994700340

Judge: Johansen

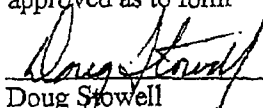
Based upon the Findings of Fact and Conclusions of Law rendered in the above captioned matter, the Court now makes and enters the following Order:

1. Petitioner's Complaint be and hereby is dismissed with prejudice.
2. The lis pendens filed by the Petitioner in this action are hereby ordered released and discharged which are lodged against Respondents' real property in the Carbon County State of Utah Records' Office as entry no. 77489 in book 445, entry no. 78686 in book 449, entry no. 79477 in book 452 and any other lis pendens filed by Petitioner against Respondent's real property.
3. Pursuant to § 30-1-17.2, Petitioner is awarded \$10,000.00 as and for attorney fees upon the sale of Respondent's ranch or any portion thereof or release of the funds held

in trust by Respondent's former attorney McIntyre and Golden.

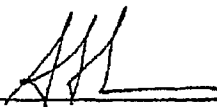
DATED this 12<sup>th</sup> day of December, 2002

approved as to form

  
Doug Stowell



BY THE COURT



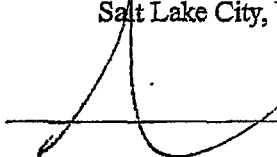
12/17/02

CERTIFICATE OF MAILING

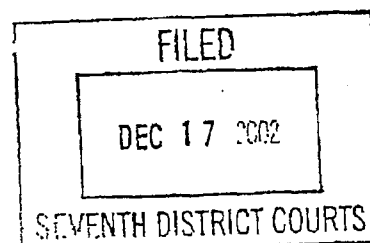
I hereby certify that on the 12 day of December, 2002 a true and accurate copy of the foregoing was mailed to:

*Delivered to*  
Douglas Stowell  
307 East Stanton Ave.  
Salt Lake City, Utah 84111

McIntyre & Golden  
3838 South West Temple  
Salt Lake City, Utah 84115



Steven Kuhnhausen (1861)  
Attorney for Respondent  
10 West Broadway  
Suite 603  
Salt Lake City, Utah 84101  
Telephone: (801) 322-1555



IN THE SEVENTH DISTRICT COURT  
IN AND FOR CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON JENSEN  Petitioner.  vs  KIM C. JENSEN  Respondent.	FINDINGS AND CONCLUSIONS  Civil No. 994700340 and 994700327  Judge: Johansen
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This matter came on for trial on the 26<sup>th</sup> day of August, 2002. Both parties were in attendance with their attorneys, Doug Stowell for Petitioner, and Rick Golden, for Respondent. The attorneys requested an in-camera conference prior to the beginning of the trial during which they both outlined their respective cases. When the trial began, the Court required the Petitioner to proffer the nature and extent of her evidence on the crucial elements of UCA 30-1-4.5 pursuant to the in-camera discussion. Respondent was allowed to likewise proffer his evidence on the same. Both parties stipulated to admission of a taped conversation between the parties, exhibit #1. Based upon prior findings and conclusions, the pleadings, the tape recording admitted into evidence, and the proffers of counsel as to the testimony of various witnesses as outlined below, the Court now makes the following findings and conclusions by a preponderance of the evidence.

FINDINGS OF FACT

1. The parties cohabited with each other from 1982 until 1996.

2. The parties had two children in common, both born prior to November, 1996.
3. In November, 1996, the parties signed an agreement which terminated the marital union, if any existed, up to that time.
4. After November, 1996, the parties at times cohabited with each other, until November, 1999.
5. Certain witnesses would testify that the parties held a joint bank account sometime after 1996.
6. Certain witnesses would testify that the parties held a joint credit card after November, 1996.
7. Certain witnesses would testify that real property and water rights were jointly held by the parties sometime after 1996.
8. The parties had consensual sexual relations with one another between November, 1996, and November, 1999.
9. On three occasions between November, 1996, and November, 1999, Petitioner rebuffed proposals by Respondent to marry.
10. Petitioner's assertion that she rejected Respondent's marriage proposals because she considered herself already married flies in the face of the 1996 agreement, as well as Petitioner's response to Respondents' summary judgment motion that she was totally ignorant of the law, and her prior position that she was frightened of Respondent and stayed with him only because she was afraid to leave.
11. At times between November, 1996, and November, 1999, the parties shared duties commonly shared by husband and wife.



12. Certain witnesses would testify they believed the parties were husband and wife.
13. Certain witnesses would testify that they did not believe that the parties were husband and wife.
14. Certain witnesses would testify that at times the parties held themselves out to be husband and wife.
15. Certain witnesses would testify that at times the parties specifically held themselves out to be other than husband and wife.
16. Certain witnesses would testify that the Petitioner specifically said that she was not married to respondent.
17. Certain witnesses would testify that Respondent always referred to Petitioner as a girlfriend or fiancé.
18. Certain witnesses would testify that the Respondent on occasion referred to Petitioner as his wife and to himself as Petitioner's husband.
19. Some of the parties closest friends and family did not consider them to be married.
20. The parties were not consistent in holding themselves out as married to the rest of the world.
21. Thomas E. Nelson, an estate planning attorney, would have testified that he prepared estate planning documents on the basis of Respondent being unmarried ( date unclear).
22. The parties filed separate income tax returns prepared in 1998 and in prior years.
23. Evidence of the parties' reputation of being married would be partial and conflicting.
24. Petitioner may reap financial gain if a common law marriage is found to exist.
25. Neither party is currently married to another.

26. Both parties have obtained their majority.
27. Petitioner has filed a lis pendens against Respondent's real property.

#### CONCLUSIONS OF LAW

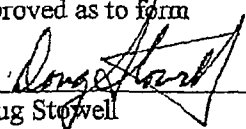
1. UCA 30-1-4.5 is controlling law in this case.
2. The relevant time period during which the existence or lack thereof of a claimed common law marriage between the parties is November, 1996, to November, 1999.
3. Consent to the existence of a marital contract is required under UCA 30-1-4.5.
4. Respondent proposed multiple times to Petitioner which Petitioner rejected each time.
5. A manifestation of intention not to accept an offer is a rejection of the offer.
6. There is no evidence of a particular point in time at which mutual consent to establish a marital relationship between the parties existed.
7. While the parties acquiesced in certain cohabitation arrangements between November, 1996, and November, 1999, there is insufficient evidence of a deliberate intention that a marriage would result.
8. The parties did not consent to the existence of a martial contract.
9. By refusing Respondent's proposal to assume martial rights, duties, and obligations, Petitioner indicated her preference to "just live together" without mutual agreement to form a marriage.
10. The parties are capable of giving consent to a marriage.
11. The parties are legally capable of entering into a solemnized marriage.
12. The parties have at times mutually assumed rights, duties and obligations between November, 1996 and November, 1999.

13. The evidence of reputation as husband and wife is partial, divided, and not general or uniform.
14. Evidence of each element of UCA 30-1-4.5 is essential to establish a valid marriage under this statute which must be proven by a preponderance of the evidence.
15. Public policy weighs heavily in favor of narrow interpretation of common law marriage. Properly solemnized marriage is an institution for the preservation of the human race and happiness of all mankind. It is recognized as an honorable estate. Our nation and its prosperity are founded upon homes of the people, and for this reason our legislature has established laws for its protection and preservation.
16. A properly solemnized marriage is in the best interest of children.
17. The State has a compelling interest in encouraging properly solemnized marriages.
18. Care must be given to guard against fraudulent marriage claims especially where a declaration of marriage would result in financial rewards for the putative spouse.
19. When a reward is available, human nature may choose to strengthen and augment, in retrospect, the consent to marry that was only tentative before the reward became available.
20. The parties were not married during the period between November, 1996 and November, 1999.
21. Petitioner has failed to meet her burden of proof as to an unsolemnized marriage.
22. In an action to determine the validity of a marriage the Court may make orders relative to the parties property and children pursuant to § 30-1-17.2 including attorney fees and Petitioner's counsel has filed a Renewed Motion for Attorney Fees.

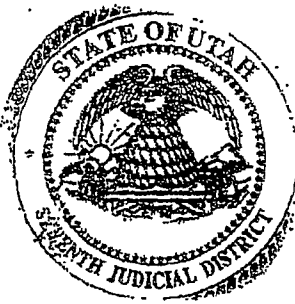
23. Because no marriage exists there can be no divorce decree as prayed for in Count II of  
Petitioner's Complaint.

DATED this <sup>th</sup> 12 day of December, 2002

approved as to form

  
Doug Stowell

BY THE COURT





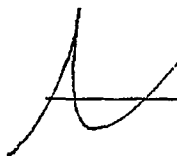
12/17/02

CERTIFICATE OF MAILING

I hereby certify that on the 12 day of December, 2002 a true and accurate copy of the foregoing was mailed to:

*delivered to* Douglas Stowell  
307 East Stanton Ave.  
Salt Lake City, Utah 84111

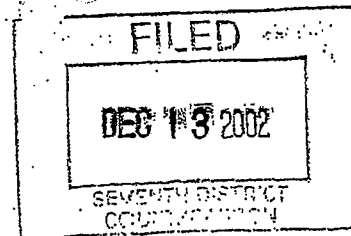
McIntyre & Golden  
3838 South West Temple  
Salt Lake City, Utah 84115



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## **EXHIBIT II**

Tonda Lynn Hampton  
Petitioner  
Resident of Carbon County  
Price, Utah 84501  
Telephone: (435) 637-0201



IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
CARBON COUNTY, STATE OF UTAH

Tonda Lynn Hampton  
Petitioner,

Complaint

VS.

Civil No.: 020701072

KIM C. JENSEN, OWNER OF  
DOUBLE J. TRIANGLE, LLC.  
Respondent

Judge: Bymer

NOTICE IS HEREBY GIVEN That the above mentioned names have had a Partnership, involving Real Property, and that the Petitioner would like to dissolve all involve, and split all assets, Real Property, and income from any and all businesses.

1. Carbon County Real Property, in the name of DOUBLE J. TRIANGLE LLC, Kim C. Jensen, owner, also Property known as all of Spring Canyon Ranch, 6 miles west of Helper, Utah.
2. Summit County Real Property, 10 acres approx. has been depleted and sold by the Respondent.
3. Assets,
  - a. 1999 Ford 350 Diesel Truck, DOUBLE J. TRIANGLE LLC. Kim C. Jensen owner.
  - b. Other assets amounting to over 200, 000.00 dollars, Respondent has been transferring and selling.
4. Business income,
  - a. Bed & Breakfast, known as Spring Canyon Ghost Town Guest Ranch, Inc. (Now, known as Double J. Triangle. LLC. Owner Kim C. Jensen.
5. Business,
  - a. CWMU Private Hunting Unit. Respondent has kept 100% of income at this time.
6. Cattle leases,
  - a. Respondent has kept all income at this time.
7. Water Rights,
  - a. Now transferred into the Double J. Triangle LLC, owner Kim C. Jensen.
8. Any and all Trust accounts since 1983
9. BYU Property, located in Spring Canyon
10. Edward Evatz Property, located in Spring Canyon
11. Kim Jensen Revokable Trust
12. AAA Enterprises, Triple A Entertainment, Cinderella's Escort Service, Glass Slipper
13. Kim C. Jensen Family Limited Partnership
14. Any and all other hidden accounts, companies, Trust notes.

Dated: December 13<sup>th</sup>, 2002

*Tonda Lynn Hampton*

PTS-000814

Petitioner ask the Courts to bring this case forward and to resolve this dispute.

During this case, a Lis Pendens need to be in place. To protect the Real Estate involved. Respondent has been depleting, hiding, transferring, out of Petitioners name, Fraudulently.  
(Evidence exist).

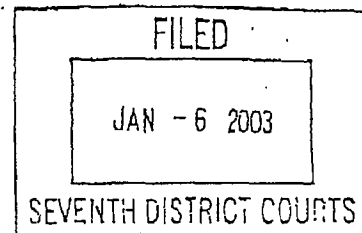
Dated: December 13<sup>th</sup> 2002,

Jonda Lynn Hampton



## **EXHIBIT III**

Tonda Lynn Hampton  
 Petitioner  
 Resident of Carbon County  
 Price, Utah 84501  
 Telephone: (435) 637-0201



IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
 CARBON COUNTY, STATE OF UTAH

Tonda Lynn Hampton  
 Petitioner,

Complaint

vs.

Civil No.: 020700004

KIM C. JENSEN, OWNER OF  
 DOUBLE J TRIANGLE, LLC.  
 Respondent

Judge: Bryner

NOTICE IS HEREBY GIVEN that the above mentioned names have had a Partnership, involving Real Property, and personal assets, the Petitioner would also like to bring to attention that the Respondent has been very abusive in this relationship; Defamation, Slander, not limited to Physical Abuse and Emotional Maltreatment, has caused Petitioner to lose her share in the business, due to Fraud, and her Reputation damaged, Petitioner also seeks a Lis Pendens on the remaining Real Property until this matter is fully resolved. Respondent has sold and hidden the Real Property at this time. Petitioner seeks full recovery on the Personal assets, and on the Real Property. At this time the Petitioner ask the courts to reverse ownership to resolve, and sue for all damages.

1. Carbon County Real Property, in the name of DOUBLE J TRIANGLE LLC, Kim C Jensen, owner, also Property known as all of Spring Canyon Ranch, 6 miles west of Helper, Utah.
2. Summit County Real Property, 10 acres approx. has been depleted and sold by the Respondent
3. Assets,
  - a. 1999 Ford 750 Diesel Truck, DOUBLE J TRIANGLE LLC. Kim C Jensen owner
  - b. Other assets amounting to over 200, 000 00 dollars, Respondent has been transferring and selling
4. Business income,
  - a. Bed & Breakfast, known as Spring Canyon Ghost Town Guest Ranch, Inc (Now, known as Double J Triangle LLC. Owner Kim C Jensen.
5. Business,
  - a. CWMU Private Hunting Unit Respondent has kept 100% of income at this time
6. Cattle leases,
  - a. Respondent has kept all income at this time.
7. Water Rights,

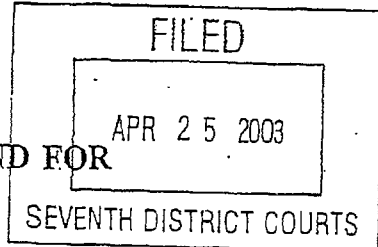
- a Now transferred into the Double J. Triangle LLC, owner Kim C. Jensen
- 8. Any and all Trust accounts since 1983
- 9. BYU Property, located in Spring Canyon
- 10. Edward Evatz Property, located in Spring Canyon
- 11. Kim Jensen Revokable Trust
- 12. AAA Enterprises, Triple A Entertainment, Cinderella's Escort Service, Glass Slipper
- 13. Kim C. Jensen Family Limited Partnership
- 14. Any and all other hidden accounts, companies, Trust notes

Petitioner ask the Courts to bring this case forward and to resolve this dispute.

During this case, a Lis Pendens need to be in place. To protect the Real Estate involved. Respondent has been depleting, hiding, transferring, out of Petitioners name, Fraudulently and maliciously.  
(Evidence exist).

## **EXHIBIT IV**

IN THE SEVENTH DISTRICT COURT IN AND FOR  
CARBON COUNTY, STATE OF UTAH



TONDA LYNN HAMPTON,	)	RULING ON MOTION TO DISMISS,
	)	MOTION FOR JUDGMENT ON THE
Plaintiff,	)	PLEADINGS, MOTION FOR
	)	SUMMARY JUDGMENT, MOTION
VS.	)	TO RELEASE LIS PENDENS
KIM C. JENSEN, owner of DOUBLE	)	
J. TRIANGLE, LLC,	)	Case Nos. 020701072 and 030700004
	)	
Defendant.	)	Judge Bryce K. Bryner

On March 21, 2003, the defendant filed one motion entitled *Motion to Dismiss, Motion to Dismiss Lis Pendens, Motion for Judgment on the Pleadings, and Motion for Summary Judgment and Damages for Wrongful Lien* (hereinafter "the defendant's motion"), together with a supporting memorandum. The plaintiff responded with a *Memorandum of Points and Authorities in Opposition* to which the defendant filed a *Reply*. A *Notice to Submit for Decision* was filed on April 24, 2003, and the motion is ripe for decision. The court has read and considered the memorandum and now issues the following ruling:

The plaintiff's pro se complaint filed on December 18, 2002, requests the dissolution of an alleged partnership between the parties. The plaintiff's pro se complaint filed on January 6, 2003, appears to request a dissolution of partnership and further asserts claims of defamation, slander, physical and emotional abuse, fraud, and loss of business interests. The court notes, however, that the plaintiff on page 15 of her *Memorandum of Points and Authorities* subsequently withdrew her claim for physical abuse.

The defendant's motion seeks a dismissal of the complaints on the grounds that: (1) certain of the plaintiff's claims fail to state a claim upon which relief can be granted; and (2) other claims in her complaint are time-barred by the applicable statutes of limitation. The defendant

also seeks a release of the lis pendens filed by the plaintiff as well as summary judgment on the issue of the partnership claims.

The plaintiff's complaint dated January 6, 2003, alleges the following causes of action:

1. Emotional Maltreatment: In paragraph 9 of plaintiff's affidavit dated April 1, 2003, attached to her memorandum, the plaintiff claims that on March 2, 2002, the "Defendant violated a protective order and contacted me, verbally assaulting me."

Emotional maltreatment is an intentional tort and is therefore subject to the one year statute of limitation set forth in UCA 78-12-29. Although the complaint was filed within one year of the alleged "verbal assault," the court finds that the action for assault fails to state a claim upon which relief can be granted. The court is persuaded that verbal abuse is not a cause of action, and if the defendant is claiming emotional distress as a result of verbal abuse, the plaintiff has not met the burden of pleading conduct considered outrageous or intolerable by societal standards.

2. Defamation and Slander: In paragraph 8 of the plaintiff's affidavit, the plaintiff claims that on August 26, 2002, (the day of trial) she first "became aware of false statements made to various individuals by the defendant which related to [her] character." She specifically avers that the defendant called her a "slut" and a "filthy pig," and that such statements were made to Sharon Jensen, Delvin McFarland, and Randy Finkbinder.

Defamation and slander are intentional torts and are subject to the one year statute of limitations set forth in UCA 78-12-29 (4). However, the one year period of limitations does not begin to run until the slander or defamation is known or is reasonably discoverable by a plaintiff. Allen v. Ortiz, 802 P.2d 1307 (Utah 1990). The complaint was filed on January 6, 2003.

Because the plaintiff's complaint for defamation and slander were filed within one year after the statements were discovered, the action is not time-barred by the one year statute of limitation.

3. Fraud: Rule 9 (b) of the Utah Rules of Civil Procedure requires that the circumstances surrounding fraud be plead with particularity. The court has examined the complaint and finds

that the alleged fraud has not been pled with particularity. The complaint merely states that the plaintiff lost her share in the business "due to fraud."

Additionally, the date of the alleged fraud is not stated in the complaint nor is it stated when the alleged fraud was discovered by the plaintiff. An action for fraud must be filed within 3 years of the fraud or the discovery thereof, UCA 78-12-26 (3). It cannot be determined from the face of the complaint when the cause of action arose in order to be able to establish when the statute of limitations began to run.

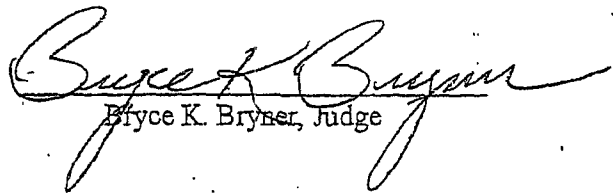
Based on the foregoing, the court finds that the complaint fails to state a claim upon which relief can be granted and the said cause of action is ordered dismissed.

4. Loss of Business: The plaintiff's complaint asserts a claim for "loss of business," and the complaint does not assert that the claim is based upon a written agreement. Accordingly, the 4 year statute of limitation set forth in UCA 78-12-25(1) is applicable. The complaint does not identify the business that allegedly suffered the loss nor does it state the date upon which the cause of action arose or the damages suffered. The cause of action for "loss of business" therefore fails to state a claim upon which relief can be granted.

5. Partnership: Both complaints allege a partnership and in essence request the court to dissolve the partnership. A partnership based on an oral agreement is subject to the 4 year statute of limitation set forth in UCA. There is a disagreement in the affidavits, however, as to when the partnership ended and when the statute of limitations began to run. The plaintiff asserts that the partnership terminated when the plaintiff vacated the premises on November 1, 1999, and that the claim for partnership was timely in each case within the 4 year limitation period. The court cannot determine when the defendant claims the partnership terminated, except that he claims it terminated more than 4 years prior to the filing of the complaint on December 13, 2002. Thus there is a material and mixed issue of fact and law with regard to the defense of statute of limitations, i.e., when the partnership terminated and when the statute of limitations began to run.

Nevertheless, the court finds that under Rule 13 (a) Utah Rules of Civil Procedure, the claim for partnership and dissolution of partnership should have been brought as a compulsory counterclaim when the plaintiff filed her answer and amended answer to the defendant's counterclaim in the common law divorce case in the Seventh District Court in Carbon County. The failure to do so is fatal to the plaintiff's causes of action for partnership and dissolution of partnership. The claims for partnership and dissolution are therefore ordered dismissed and the lis pendens filed in the Carbon County Recorder's office as a result of the claims asserted in each of the above two cases are ordered released.

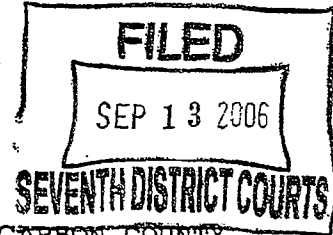
DATED this 25<sup>th</sup> day of April, 2003.

  
Bryce K. Bryner, Judge



## **ADDENDUM 6**

### **Order Disposing of the 2004 Suit**



THE SEVENTH DISTRICT JUDICIAL COURT IN AND FOR CARBON COUNTY  
STATE OF UTAH

TONDA LYNN HAMPTON,  
Plaintiff,  
vs  
KIM C JENSEN,  
Defendants,

ORDER

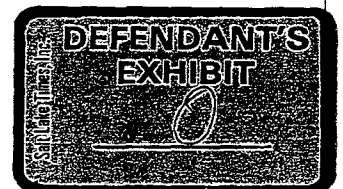
Case No. 040700256

Judge Lyle R. Anderson

Defendant Kim C. Jensen ("Jensen") has filed a motion to dismiss on the ground that the claims made by plaintiff Tonda Lynn Hampton ("Hampton") are precluded by the decisions made in case numbers 994700340, 994700327, 020701072, and 030700004, all filed in Carbon County. Hampton opposes dismissal.

The court has read Hampton's complaint filed on April 23, 2004. Rule 8, U.R.C.P., requires that a complaint contain a "short and plain statement of the claims showing that the pleader is entitled to relief" and "a demand for judgment for the relief" desired. Hampton's complaint does not satisfy this standard.

While there are portions of the complaint that are understandable, most of the numbered paragraphs do not communicate any meaning to the court. Taken as a whole, the

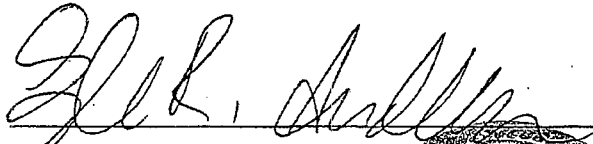


complaint does not explain what has happened, and why what has happened entitles Hampton to relief from this court. Moreover, given that this court has seen four previous lawsuits between these parties in the past seven years, it does not appear likely that Hampton can prepare and file an amended pleading compliant with Rule 8. The complaint is accordingly dismissed with prejudice.

Jensen asserts that the doctrine of res judicata bars this action. Since that argument raises matters outside the pleadings, namely the substance of the other disputes resolved earlier, this must be treated as motion for summary judgment. The court takes judicial notice of the filings in those other cases which have been attached to pleadings filed in this case. From those pleadings, the court is satisfied that, to the extent Hampton may have succeeded in stating a claim that satisfies the requirements of Rule 8, U.R.C.P., that claim either was, or should have been, raised in at least one of those earlier cases. Jensen is accordingly also entitled to summary judgment and Hampton's complaint is hereby dismissed on that ground as well.

This order is the final order of this court in this case.  
No further order or judgment is required.

Dated this 12<sup>th</sup> day of September, 2006

  
Lyle R. Anderson, District Judge




CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 040700256 by the method and on the date specified.

METHOD	NAME
Mail	TONDA LYNN HAMPTON PLAINTIFF PO BOX 586 PRICE, UT 84501
Mail	RONALD H GOODMAN ATTORNEY DEF 8 N CENTER ST POB 727 AMERICAN FORK UT 84003-0727

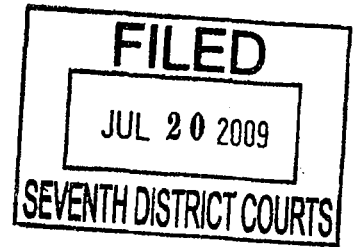
Dated this 13 day of September, 2006.

  
Deputy Court Clerk

## **ADDENDUM 7**

### **Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment**

TONDA LYNN HAMPTON  
P.O.BOX 586  
Price Utah 84501  
Tele: (435) 650-3333



IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR  
CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON	(
Plaintiff,	( PLAINIFF MEMORANDUM
	( IN OPPOSITION
	( TO DEFENDANTS MOTION FOR
	( SUMMARY JUDGMENT
	(
	(
Vs.	( Case No.: 070700813
	(
PROFESSIONAL TITLE SERVICES,	( Judge: Douglas B. Thomas
a corporation	(
Defendant;	(
CLAY G. HOLBROOK an individual	(
Defendant	(

Plaintiff, Tonda Lynn Hampton as Pro Se, in accordance with Rule 7 (c)(1)  
U.R.C.P., herby submit her Memorandum in Opposition to Defendants Motion for  
Summary Judgment, and assert she is entitled to have Defendants' Motion Denied on the  
grounds of Concealment and Material Fact and there is genuine issues for Trial as will be  
stated below:

**Plaintiff's Response to Motion for Summary Judgment**

Plaintiff makes a general objection to all defendants' statement numbered 1 through 6.

1. Plaintiff's Complaint is barred by the running of the respective statutes of  
limitations;

**Response: Denies,**

- a. An Oral Agreement in effect approximately the year of 2007 and for that reason Plaintiff filed in a timely manner (within one year).
  - b. Fraud filed within 3 years UCA 78-12-26 (3).
  - c. Defendants Files, produced in 2008, have now exposed the concealed documents and due to the intentional Fraudulent Concealment and the avoidance by the defendants to produce to Plaintiff's earlier request Toll the Statute of Limitations.
2. Plaintiff's Complaint is barred by the issue preclusion branch of the doctrine of res judicata;

**Response:** Denies,

- a. This case is based on Oral Agreements the Defendants' entered into on approximately the year of 2007.
  - b. During this case the Third Amended Complaint mentions Fraud now discovered within the Defendants files produced during Rule 26 Discovery stage which documents have previously been concealed.
3. Defendants complied with their duties as closing and escrow agents, and the facts demonstrate that they cannot be liable for breach of contract, negligence, slander of title, or fraud;

**Response:** Denies,

Defendants did not do their full duty of care before the escrow order where into effect. Defendants have interfered with Plaintiff's titled ownership prior to the to the Stipulation Order dated January 23, 2002 and Escrow order dated approximately January 25, 2002 and continued to conceal other documents until 2008 Discovery



stage and therefore are responsible and liable. Defendants caused error in the "Chain of title" which Holbrook admitted before July 2007 and did agree to compensate for her losses, before the date of the filed Complaint dated August 14, 2007. Plaintiff claims Doctrine of Fraudulent Concealment has been carried out by the Defendants and will demonstrate in her Opposition to the Summary Judgment with her Affidavit attached to her once deed real estate.

4. There was no meeting of the minds regarding any alleged settlement agreement;

**Response: Deny**

There was a final Agreement and not negotiation Defendant Holbrook realized plaintiff's position and his. He contacted her with a figure to relinquish her rights for \$21,185.47 to a certain Deed of Title (6.32 acres Home) and then asked if she would draw up that agreement however he did not like the wording to her agreement; it put all the blame on. (see Affidavit of Tonda Hampton Exhibit 8, PTS000662). Defendant then stated he would have an agreement drawn up the next day approximately 20 days later on August 27, 2002 he provides Agreement, Deed and Disclaimer for \$21,185.47 for the 6.32 acres as agreed to. But the Agreement was not sign due to the Defendant finding a filed complaint dated August 14, 2007 which he added for Plaintiff to dismiss complaint within his Settlement Agreement.

5. Because Plaintiff's Complaint was brought in bad faith, Defendants are entitled to their attorney's fees for defending this action.

**Response: Deny**

Plaintiff filed the complaint long after their agreements to compensate her for her losses. Defendant did not agree to the wording of Plaintiff's agreement, Holbrook

stated that he would draw up the agreement and have to her approximately August 9, 2007. However Plaintiff never heard from Holbrook. Plaintiff called numerous times only to be told Holbrook is out of the office or out of town. Complaint filed August 14, 2007 in order to protect her rights against the Statute of Limitations.

6. A Memorandum in support is filed contemporaneously herewith. WHEREFORE, Defendants Professional Title Services and Clay Holbrook request that summary judgment be granted in their favor and against Plaintiff on all causes of action raised in Plaintiff's Third Amended Complaint, and that Defendants be awarded their attorney's fees due to Plaintiff's bad faith in bringing this action.

**Response: Deny**

Defendants Memorandum for Summary Judgment should not be granted on the grounds that there is Material Fact and Defendants' Motion Denied on the grounds of Concealment and there are genuine issues for Trial. Defendant should not be awarded attorney fees on the grounds that her complaint is brought in good faith.

#### STATEMENT OF UNDISPUTED FACTS

1. Plaintiff did own title to these Deeds; listed below;
  - a. Warrant Deed August 27, 1993; water rights numbers are listed on deed, grazing permits, grazing leases See Affidavit of Tonda Hampton at # 35 (PTS000428 to PTS000431);
    - i. Application for Grazing Permit No. GP 21094
  - b. Quit Claim Deed August 27, 93 (PTS000432);
  - c. Special Warranty Deed May 3, 1994 (PTS000433 and PTS000434);
  - d. Quit Claim Deed May 3, 1994 (PTS000435);
  - e. Quit Claim Deed May 3, 1994 (PTS000436);
  - f. Warranty Deed August 1997 (PTS000437);
2. Defendants did alter her ownership;
  - a. Quit Claim Deed dated April 20, 1997 and recorded on November 15, 1999 request of Professional Title Service (see Affidavit of Tonda Hampton, Exhibit #19).
  - b. Planning & Zoning document dated January 1998 and the legal

- description that Defendants failed to record a title to document as stated in that document which is the cause for a deed to be floating out there somewhere. (see Affidavit of Tonda Hampton, Exhibit #15).
3. Due to the fact of Defendants Negligence in their Duty is the cause of that Quit Claim Deed dated April 20, 1997 to later appear over two years and seven months (2 years and 7 months) later. The Failure of Defendants to record that title allowed that same title and additional several legal descriptions were attached of approximately 4100 acres and included that May 6, 1998 title consisting of 6.32 acres and House. PTS recorded on November 15, 1999.
4. Therefore defendants are liable for breach of contract, negligence, slander of title, and for the fraud discovered within defendants "Defendants provided 427 documents (July 9, 2008) (see Affidavit of Tonda Hampton, Exhibit #26).
5. There exist an Oral Agreement due to the meeting of the minds. (See Affidavit of Tonda Hampton all documents).

### CONCLUSION

For the reason and upon the grounds set forth in the foregoing memorandum, Plaintiff respectfully requests this Court to deny Defendants' Motion for Summary Judgment. Defendant has violated Plaintiff's rights of her Titled ownership to thousands of acres when they cause the Error in the Chain of Title by their Negligence and other stated in the Third Amended Complaint.

This is not a case for Summary Judgment because of the facts;

this court is asked to recognize this case for what it is -- a case in which defendant Holbrook has agreed to an oral agreement thus, the documents provided during discover

has exposed the defendants' to mistakes and fraud of the plaintiff's real estate in question. Defendant's had no legitimate right to alter ownership of plaintiff's titles ownership and then continue to conceal when plaintiff in 2006 requested certain documents. (See Affidavit of Tonda Hampton).

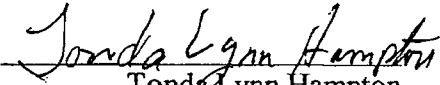
DATED this 20 day of July, 2009.

*Tonda Lynn Hampton*  
Tonda Lynn Hampton  
Plaintiff  
Pro Se

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20 day of July, 2009, I caused to be mailed a true and correct copy of the going pleading, postage prepaid, to the following:

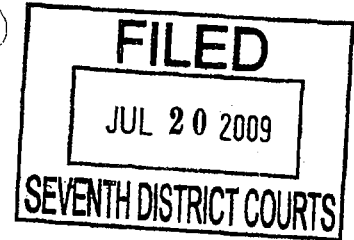
Hirschi Christensen, PLLC  
Justin R. Bair (11035)  
136 East South Temple, Suite 1400  
Salt Lake City, Utah 84111

  
Tonda Lynn Hampton  
Plaintiff  
Pro Se

## **ADDENDUM 8**

Affidavit of Tonda Hampton in Support of  
Plaintiff's Memorandum in Opposition to  
Defendants' Motion for Summary Judgment

TONDA LYNN HAMPTON  
P.O.BOX 586  
Price Utah 84501  
Tele: (435) 650-3333



IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR  
CARBON COUNTY, STATE OF UTAH

TONDA LYNN HAMPTON,  
Plaintiff,

vs.

PROFESSIONAL TITLE SERVICES,  
a corporation

Defendant;

CLAY G. HOLBROOK an individual  
Defendant

(  
( **AFFIDAVIT OF TONDA LYNN**  
( **HAMPTON**

(  
( Case No.: 070700813

(  
( Judge: Douglas B. Thomas

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I, Tonda Lynn Hampton, being first duly sworn, depose and state as follows:

1. I am over the age of 21 years, and am competent to testify in this matter.
2. I am a named Plaintiff in this matter.
3. I filed a Complaint dated August 14, 2007 against the Defendants in this case.
  - a. Clay G. Holbrook, served on December 2007 and;
  - b. Professional Title Services on December 2007.
4. On August 14, 2006, I sent a letter to Mr. Clay G. Holbrook by certified mail Questioning Deed of Ownership (6.32 acres and House) Certified Letter is attached to my affidavit as Exhibit 1 (stamped PTS000645).
5. Due to no response, On September 15, 2007, I sent a letter to Mr. Clay G. Holbrook by certified mail Questioning Deed of Ownership (6.32 acres and House)

Certified Letter is attached to my affidavit as Exhibit 2 (stamped PTS000646 to PTS000648).

6. On September 27, 2007, (Holbrook did call Hampton September 25, 2007 as stated in this letter) I sent a letter to Mr. Clay G. Holbrook by certified mail again Questioning Deed of Ownership (6.32 acres and House) Certified Letter is attached to my affidavit as Exhibit 3 (PTS000649 to PTS000651).

7. Due to no response, On October 12, 2006, I sent a letter to Mr. Clay G. Holbrook by certified mail Questioning Deed of Ownership (6.32 acres and House) Certified Letter is attached to my affidavit as Exhibit 4 (PTS000652 to PTS000654).

8. October 16, 2006, Holbrook contacted Hampton stating "Said lands were sold according to the terms of an order of the court entered January 23, 2002. Letter is attached to my affidavit as Exhibit 5 (PTS000655).

9. On November 25, 2006, I sent a letter to Mr. Clay G. Holbrook by certified mail Questioning Deed of Ownership (6.32 acres and House) and stated that I appreciate his information stated above in no. 8. Certified Letter is attached to my affidavit as Exhibit 6 (PTS000656).

10. On July 23, 2007, I sent a letter to Holbrook, that I appreciate his concerns about the Real estate in question. Holbrook had earlier stopped Hampton in the Court house and stated that there is an error in title letter is attached to my affidavit as Exhibit 7 (PTS000657).

11. Holbrook arranged a meeting with me at the office of Professional Title Services to discuss the title and a compensation to relinquish my rights to that title of 6.32 acres.



12. We both agreed to half of \$42,060.94 remainder of that what Escrow order of \$200,000.00. (see affidavit of Clay G. Holbrook exhibit 1 (PTS305 and PTS304).
13. Holbrook requested that I draw up the Agreement, I did and delivered it to the Office of Professional Title Services the Agreement is attached to my affidavit as Exhibit 8 (PTS000662 to PTS000666).
14. I called several different days to the office to contact Holbrook, but he was gone out of the office or out of town.
15. I made contact to Holbrook by phone, He stated that he did not like my wording that it put all the blame on him.
16. I told him I was sorry, and stated that he would be more experienced to draw up an Agreement.
17. Holbrook said he would get back to me approximately on August 9, 2007.
18. I did not hear from Holbrook, I called he was either gone or out of town.
19. I filed an August 14, 2007 complaint in order to protect my rights. But did not serve Defendants' in case they kept their Agreement.
20. I finally reach Holbrook by phone approximately August 27, 2007; He made a comment to the effect "That It seems that you have taken different measures" and then he mentioned the Complaint that I filed on August 14, 2007.
21. I told him that the time is of the essence and I had to protect my rights.
22. Holbrook arranged for me, to come to the office at Professional Title Service to settle up. Concerning the 6.32 acre and House and a check for the amount of \$21,185.47.

23. I arrived at the office, Holbrook proceeded to give me documents to sign which consisted of a Settlement Agreement, Disclaimer and Quit Claim Deed attached to my affidavit as Exhibit 9 (PTS000658 to PTS000661).

24. I had notice that Settlement Agreement, and the terms stating "First Party (Hampton) will dismiss, or cause to be dismissed, that certain action filed August 14, 2007" attached to my affidavit as Exhibit 9 (PTS000658).

25. I did not sign documents due to the fact of that Settlement Agreement.

26. Holbrook said he is responsible for the 6.32 acres only and not the rest and insisted that I need to reword my complaint and then we will see what can be done (regarding that \$21,185.47).

27. Plaintiff did not feel comfortable with Holbrook request and on December 10, 2007 served each defendant with the August 14, 2007 complaint and Summons.

28. During the discovery stage, in 2008 defendants produced hundreds of document which alerted me to the ownership, the altered documents and certain Deeds filed (and not filed) I am trying to make some sense of all this.

29. At this time Plaintiff believes that Defendants are Liable for her losses of several thousands of acres due to admitting error and know through this case defendants continue to conceal there actions by filing a Summary Judgment.

30. Because Defendants altered and concealed true ownership to all of my real estate I did not receive my portion of the individual sells. (see Affidavit of Clay G. Holbrook, Exhibit 1 and 2 within Memorandum in support of Defendants Motion for Summary Judgment).

31. Because Defendants fraudulently concealed a document called a TRUST DEED NOTE for \$85,000.00, I did not receive my portion is attached to my affidavit as Exhibit 10 (PTS7).

32. Because Defendant Altered ownership of my titles and fraudulently concealed the misconduct, I did not receive my portion of the individual sell of \$ 600,000.00 attached to my affidavit as Exhibit 11 (PTS100 and PTS101).

33. Because Defendant Altered ownership of my titles and fraudulently concealed I did not receive my portion of the individual sell of \$ 300,000.00 attached to my affidavit as Exhibit 12 (Missing at this time).

34. Because Defendant Altered ownership of my titles and continued to fraudulently concealed the truth, I did not receive my portion of the individual sell of \$ 125,000.00 attached to my affidavit as Exhibit 13.

35. Defendants and I have had several transactions since 1993 that involve several parcels of land, water rights, and grazing permits that are deeded to Jensen and Hampton, as joint tenant. Deeds are attached to my affidavit as Exhibit 14.

a. Warrant Deed August 27, 1993; water rights numbers are listed on deed, grazing permits, grazing leases (PTS000428 to PTS000431);

i. Application for Grazing Permit No. GP 21094

b. Quit Claim Deed August 27, 93 (PTS000432);

c. Special Warranty Deed May 3, 1994 (PTS000433 and PTS000434);

d. Quit Claim Deed May 3, 1994 (PTS000435);

e. Quit Claim Deed May 3, 1994 (PTS000436);

f. Warranty Deed August 1997 (PTS000437);

36. In 1997, Planning and Zoning are subdividing out of my Titled to Section 7 that has 549.79 acres; which then the 6.32 acres was separated leaving 543.47 acres in section 7 attached to my affidavit as Exhibit 15 (PTS405 to PTS407). Defendants recorded this Certificate of Waiver that is dated January 7, 1998 with the description attached 6.32 acres and recorded on May 7, 1998. However "This Certificate must be recorded with the deed...."(see at PTS406) there is NO DEED RECORDED which is the cause of a title floating around somewhere unknown to me at the time.

37. Defendants are aware of several loans on the real estate from 1993 to approximately 2002; the last pay off attached to my affidavit as Exhibit 16.

- a. August 8, 1997; Jensen and Hampton on 6.32 acres;
- b. August 27, 1997; Jensen and Hampton on Section-7; 549.79 acres;
- c. August 27, 1997; Jensen and Hampton on 6.32 acres;
- d. February 26, 1998: Jensen and Hampton on 6.32 acres;

38. May 6, 1998 Quit Claim Deed to Jensen and Hampton is recorded by Professional Title Services on May 7, 1998 with the description of 6.32 acres attached to my affidavit as Exhibit 17 (PTS000442 to PTS000443).

39. Defendants aware of these title reports attached to my affidavit as Exhibit 18.

- a. June 10, 1998; Jensen and Hampton on 6.32 acres (PTS351 to PTS354);
- b. June 10, 1998; Jensen and Hampton on approximately 4,100 acres  
(PTS149 to 155);

This document appears to be altered; Jensen and Hampton interest is replaced with a hand written "Double J-see other file". (see at document stamped PTS149) and it appears that

6.32 acres is also listed on this same report with a hand written note stating "Change to Foy's legal" (see at document stamped PTS151) and the Green Belt has a note "Replace w/ Bk 449 p 534 (see at document stamped PTS155 at #31).

40. April 20, 1997 Quit Claim deed recorded November 15, 1999 by Professional Title Serviced (2 years 7 months later) attached is an Exhibit A, which is approximately 4,100 acres with that 6.32 acres and house Tax ID 2A-1036-1. (Jensen and Hampton to K.C. Family Limited Partnership) attached to my affidavit as Exhibit 19 (PTS000444 to PTS000446) and approximately two minutes later;

41. April 20, 1997 Quit Claim deed recorded November 15, 1999 by Professional Title Serviced also attached is a Exhibit A, which is approximately 4,100 acres with that 6.32 acres Tax ID 2A-1036-1. (K.C. Family Limited Partnership to Double J Triangle, L.L.C) attached to my affidavit as Exhibit 20 (PTS000447 to PTS000449).

42. Approximately 2008, Plaintiff was given a copy of a document dated February 1, 2000 that was buried in an old filing cabinet that had revealed this letter that states "I talked with Clay (Holbrook) and he said that it was included with the other parcel that were already changed to double J. Triangle.....Now the application that is on the home and the 6.32 acres will have the name Double J Triangle" Signed Francis Price; Carbon County Assessor office attached to my affidavit as Exhibit 21 (TLH1).

43. A document by Holbrook dated On September 11, 2002, states "I, Clay G. Holbrook, certify that I am licensed as Title Insurance Agent.....that I have reviewed the attached document and have prepared this Report of Water Right Conveyance or that it was done under my direct supervision.....I further certify that the documents attached hereto evidence the ownership interest of the current water right owner(s) named in

section A; (See PTS311) Section A gives a description of that April 20, 1997 Quit Claim Deed that was recorded on November 15, 1999 by Professional Title Services (See PTS310) attached to my affidavit as Exhibit 22.

44. I also will admit that during all of these transactions especially beginning 1996 to the now that I was a battered woman and filed for a Protective Order and a Divorce against Jensen I was in Therapy for several years. However the Court found no marriage existed and therefore no divorce degree can be granted. The parties have two children together at that time were 14 year old and a 11 year old. Court did not enter an Order for Child Support.

45. On September 27, 2002, a Review and Order in Case No.: 131094; 154297; attached to my affidavit as Exhibit 23 (TLH48-1 to TLH49-1).

46. History of Hampton cases listed below 6 total.

1. 994700327 (Abuse case) Filed approximately November 1, 1999 with Protective Orders in place (Hampton evaluated with (PTSD) post traumatic stress syndrome) and as of;
  - a. 2002 September 27, Review and Order (TLH48-1)
    - i. "Mr. Stubbs reports that mother (Hampton) is making progress and the children have improved in school"....."Mr. Stubbs is recommending continued PSS with the mother"...."Dr. Elder recommends that the boys get to choose how and when they visit with father";

- ii. "Mr. Golden (defendant attorney) report that the father (Jensen) would like visitation or custody. He would like Mother to get more help and have DCFS supervise more closely" .... "Mother wants protective supervision with DCFS continued" (see at middle of page 1).
- iii. ORDER "Protective supervision with custody to the mother is continued";
- iv. "There will be no visits with father except as requested by the boys and therapist";
- v. "The boys are to continue therapy with 4CMH.....";
- vi. "There is to be no exchange of the physiological evaluations" (see at pg. 2 (TLH49-1)).

- 2. 994700340 (Divorce petition (18 years) Lis Pendens filed November 15, 1999 Hampton and Jensen, joint tenant on the real estate titles (see def. Mem. Sum. Jud. Exh. C). both cases dismissed; Final Court Order dated December 17, 2002.

- i. Because no marriage exists there can be no divorce decree as prayed for." (see def. Mem. Sum. Jud. Exhibit 1, pg. 6, line 23).

- 3. 020701072 (Partnership Dissolution) filed December 18, 2002; Hampton vs. Jensen plaintiff also list her titled property as "Property known as all of

Spring Canyon Ranch , 6 miles west of Helper, Utah. (see Defendants Mem. Sum. Jud. exhibit II (PTS000813), at #1 on doc. PTS-000814).

4. 030700004 (Partnership Dissolution, Slander, Physical and emotional abuse, fraud, and loss of business interest) filed January 6, 2003, Hampton vs. Jensen and filed lis pendens. Case dismissed April 25, 2003 "Nevertheless, the Court finds under Rule 13(a) URCP, the claim for partnership and dissolution of partnership should have been raised in 1999 Common Law Marriage case (see Def. Mem. Sum. Jud. Exhibit IV, document stamped PTS000823).
5. 034700021 (Paternity Case) Hampton vs. Jensen; Contempt Mr. Jensen in the rear on child support and Hampton seeking an order for Child support since there was no order issued after the 1999 divorce petition.
6. 040700256 (Fiduciary Duty) Hampton vs. Jensen Filed April 23, 2004 (see Def. Mem. Sum. Jud. Exhibit M (PTS000973) also state that "The trust account no longer exists (see at #5 (PTS000973), Dismissed September 13, 2006; due to "Rule 8, U.R.C.P., requires that a complaint contain a "short and plain statement of the claims showing that the pleader is entitled to relief" and "a demand for judgment for the relief" desired. Complaint does not satisfy this standard" (See Def. Mem. Sum. Jud. exhibit O, at pg. 1 par.2).



47. However 2002, January 23, exist a "Stipulation Order" Plaintiff opposes this stipulation order on the grounds that it is fraudulent in its real estate claims and water.

a. In the 1999 case defendant Ex Parte Motion that lead to telephonic hearing on that Motion. (See Def. Mem. Sum. Jud; exhibit G; pg. 1; stamped PTS000481)

b. "Counsel for both parties, by approving this Order, represent to the Court that they do not specialize in real property transactions and that neither counsel makes any representations to the Court, any party or any other person regarding the property description in this Order: Rather the property descriptions herein are based solely on descriptions provided by the real estate brokers or title insurance companies, copies of which have been provided to the Court" (see pg. 2 and 3; stamped PTS000482 & PTS000483 at #5.

c. "The Court notes for the record that counsel for Petitioner (Hampton) has made every effort to review this Order with Petitioner, but counsel has been unable to reach Petitioner to receive her final approval. Counsel for petitioner believes this Order reflects substantially all matters of an earlier version of this Order and on which Counsel received Petitioner's agreement see at (PTS000486) at #12.

d. Two Parcel are ordered to be release from a Lis Pendens;

(1) Ghost Town Guest Ranch Lodge and the 6.37 acres on which it is located:

Tax ID#2A-1036-002, Carbon County, state of Utah.

and,

(2) Approximately 675 Acres west of Helper, Utah: All of Carbon County tax ID#2A-1060-0002, containing 428.96 acres more or less. All of the property owned by Double J Triangle LLC which is in Carbon County Tax ID#2A-1038-0000 and .....containing approximately 246 acres. These two parcels contain approximately 675 acres more or less" (see Def. Mem. Sum. Jud. Pg. 3, stamped PTS000483 at #1).

e. However within the Stipulation Order referring to Tax ID#2A-1038-0000 "All of the property owned by Double J Triangle LLC which is in Carbon County Tax ID#2A-1038-0000 and .....containing approximately 246 acres. These two parcels contain approximately 675 acres more or less" (see Def. Mem. Sum. Jud. Pg. 3, stamped PTS000483 at #(2).

It appears on record that the Tax ID#2A-1038-0000 never did belong to Double J Triangle LLC that contains 246 acres.

The Tax ID#2A-1038-0000 is owned by Carbon County acreage of 0.08 acres attached to my affidavit as Exhibit 24 (TLH33-1).

f. "In addition, two acre feet of water provided from other property owned by Double J Triangle is to be included in the sale (see Def. Mem. Sum. Jud. pg. 4, at last two line on page (PTS000484). However they never did own the water (see attachment 22, especially (PTS422 and PTS96) it appears there was pressure to get that water to the new owners of that court order sell of that 6.32 acres).

- i. In addition, Plaintiff is ignorant to how real estate descriptions operate but familiar of the loan that is in Default for foreclosure and ordered to sell. Holbrook being familiar with the real estate would have noticed the above mentioned or at some point during title insurance, or title research but instead continued to fraudulently conceal.

48. Plaintiff has transcript word for word of a recording. The recording is of August 27, 2007 meeting at Professional Title Services with Holbrook and is attached to my affidavit as Exhibit 25 (TLH4-1 to TLH15-1).

49. It appears within Defendants files stamped PTS-1 through PTS-668 there are certain altered documents discovered during the Discovery stage Under Rule 26, as of 2008 plaintiff has tried to review and understand what has happened that wipe her out and what is the cause that removed all Hampton, Joint Tenant ownership of several titles and all Water Rights and tangibles.

I have listed a portion in all of the above statements and therefore I Deny allegations made by the Defendants Memorandum and Affidavit.

50. Defendants Memorandum states "Court had already determined that Plaintiff (Hampton) did not have right or title to those properties. Accordingly, Plaintiff's case is are barred by the doctrine of res Judicata. (See at Defendants Mem. In Supp. Sum. Jud. at pg. 2, at IV. Paragraph 1, line 4). Plaintiff deny this statement.

51. Defendants Attorney requested documents from those cases one (1) through five (5), listed above, at # 46, plaintiff response "Object to the request on the ground that the above request does not pertain to this suit" (Def. exh. B, Mem. in Supp. Sum. Jud.).

52. Defendants never requested the Case No. 040700256 Which now is stated in that Motion "However, Plaintiff filed another lawsuit in 2004, Fiduciary Duty on Jensen which was also dismissed by this Court" (see at pg. ii, par. 2, last 2 lines on pg). Plaintiff's states this case is the reason for her to contact Defendants to obtain information within a file that Defendants controlled.

53. I sent First Certified letter on August 14, 2006, to the place of business Professional Title Services, located in Price Utah approximately one month before this case no. 040700256 was dismissed, then I followed with several more certified letters to Defendants to obtain the chain of title.

53. This Case No. 040700256 was dismissed September 12, 2006. I was going to Appeal but time is now against me. Defendant finally contacted me by phone, September 25, 2006 after the dismissal. See Plaint. Affid. Exh. 3.

54. I sent again another certified letter dated. Defendant Clay G. Holbrook approached me while I was in the Court House in Price, Utah and wanted to meet with me. He stated that there had been an error made.

55. I sent a Letter thanking him for his concern and I cannot meet him on that date we discuss earlier.

56. Meeting of July 2006, the Parties agreed she is Joint tenant on the titles. Clay G. Holbrook presented an Escrow document (\$200,000.00 House and 6.32 acres) to Plaintiff at the offices Professional Title Services. Clay G. Holbrook and Plaintiff agreed to compensate her half that she would have been entitled to if not for the error made. Defendant admitted that the May 6, 1998 Title is entitled to her (Aff. Of Hampton, Exhibit 17). Defendant gave the figure of \$21,185.47 from that figure \$42,060.94 (see Affidavit of Clay Holbrook Exhibit 4).

57. Also, another Escrow Order (\$135,000.00) was given to Plaintiff by Defendant, which was also, connected to the sale (\$200,000.00) which that Escrow order of \$200,000.00 paid the commissions of \$12,000.00 dollars and the Escrow order for \$135,000.00 did not (see Affidavit of Clay Holbrook Exhibit 1 and 2).

58. Plaintiff can show that an Oral Agreement was in effect, and how Defendants later manipulated Plaintiff to release all her titled property, approximately 4,200 acres, for the same amount that was agreed upon in an earlier conversation, for that first Escrow Order of \$200,000.00 dollars, prior to August 14, 2007 file complaint with this Court, for that house with 6.32 acres for \$21,185.47.

59. Defendants' become aware of a filed complaint dated August 14, 2007 and on August 27, 2007 decided to add a Settlement Agreement to the Disclaimer and a Quit Claim Deed that was to relinquish Plaintiff's rights to that 6.32 acres and Home which would then release all her rights to approximately 4,100 acres.

60. Defendants did agree to \$21,185.47 which is approximately half of her share she lost due to the defendants causing a title error that was unknown to Plaintiff at the time of the Court order to sell (Sold January 23, 2002) due to a Default Notice on a Bank Loan with Plaintiff, Defendants are aware of Plaintiff's Joint Tenants since 1993 and several loans on that property. However, during several conversations between Defendants and Plaintiff did agree that fraud does exist that involved approximately 4,200 acres. On August 27, 2007, Defendant had a different outlook on the situation and then stated to the Plaintiff that they are not responsible for all, just the 6.32 acres and willing to take care of that only. Plaintiff again agreed to what they discuss earlier on that issue but not to that new Settlement Statement that was a surprise to her that day. Defendant did not uphold his end and of the Oral Agreement that was now in writing by him and causing Plaintiff not to sign because of that Settlement Statement. Defendant wanted Plaintiff to reword her August 14, 2007 complaint. Plaintiff said she would drop the house and 6.32 acres and is willing to settle to what was agreed on. However, Plaintiff had to serve Defendants' on December 10, 2007. During these meetings Defendant did not produce documents in their file; until June 2008, and is the cause of the third amended complaint that now states fraud.

STATE OF UTAH

)

:SS

COUNTY OF CARBON

)

I, *Tondalynn Hampton*, being first duly sworn, deposes and states as follows:

DATED this *26* day of *July*, 2009.

*Tonda Lynn Hampton*

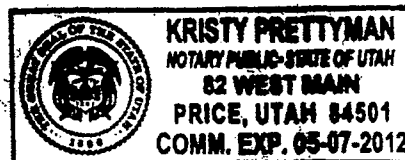
SUBSRIBED AND SWORN to before me this *20<sup>th</sup>* day of *July*, 2009.

My Commission Expires:

*05/07/2012*

*Kristy Prettyman*

NOTARY PUBLIC



## **ADDENDUM 9**

### **Relevant Portions of the Transcript of the Summary Judgment Hearing**



ORIGINAL

FILED

DEC 14 2009

SEVENTH DISTRICT COURTS

IN THE SEVENTH JUDICIAL DISTRICT COURT

CARBON COUNTY, STATE OF UTAH

-o0o-

TONDA LYNN HAMPTON,

Plaintiff,

vs.

PROFESSIONAL TITLE SERVICE,

Defendant.

Case No. 070700813

MOTION FOR SUMMARY  
JUDGMENT

-o0o-

BE IT REMEMBERED that on the 21st day of September, 2009, commencing at the hour of 10:12 a.m., the above-entitled matter came on for hearing before the HONORABLE DOUGLAS B. THOMAS, sitting as Judge in the above-named Court for the purpose of this cause, and that the following proceedings were had.

-o0o-

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UTAH APPELLATE COURTS

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A P P E A R A N C E S

For the Plaintiff:

TONDA LYNN HAMPTON  
Appearing Pro Se

For the Defendant:

JUSTIN R. BAER  
Attorney at Law  
Hirschi, Christensen  
138 East South Temple, 1400  
Salt Lake City, Utah 84111

\* \* \*

P R O C E E D I N G S

(Transcriber's Note: Speaker identification

may not be accurate with audio recordings.)

THE COURT: Good morning. We're here on the case of Tonda Lynn Hampton vs. Professional Title Service and Stewart Title Guaranty and Clay G. Holbrook. We have the petitioner-- plaintiff, who is present.

Are you prepared to proceed, ma'am?

MS. HAMPTON: Yes.

THE COURT: Okay. Thank you.

We also have the defendant, who is present and represented by counsel. You are?

MR. BAER: Justin Baer.

THE COURT: Thank you, Mr. Baer.

This is the time set for the defendant's motion for summary judgment, hearing on that motion.

Are you prepared to proceed as well, Mr. Baer?

MR. BAER: Yes, your Honor.

THE COURT: Okay. Go ahead. You may present your--

MR. BAER: Thank you, your Honor.

Defendant's motion for summary judgment requests summary judgment on all of plaintiff's claims brought in the

further lawsuit. And when plaintiff indicated she was going to continue the suit and this was only as to one claim, that's when the settlement agreement was not completed. And so I believe that based on these facts, it can be held that there was no meeting of the minds.

THE COURT: Okay. Thank you.

MR. BAER: Thank you.

THE COURT: Ms. Hampton? Go ahead, you can make your claim wherever you'd like.

MS. HAMPTON: Your Honor, I wrote some notes down, so I'll just read them, if I could.

THE COURT: Okay. But I'm going to be listening very carefully, you need to respond to the claims that have been made by Mr. Baer today.

MS. HAMPTON: Respond?

THE COURT: Okay?

MS. HAMPTON: Okay. Should I respond to those now?

THE COURT: Well, however you want to do it. This is your time. I'll--I don't want to dictate to you how you must present your claim.

MS. HAMPTON: Okay. On the summary judgment, on the requirements, that it needs to be no dispute to the facts, entitled to judgment as a matter of law if the law is properly stated and applied.

And your Honor, this is a case involving the

concealment of an error, a mistake. The defendants have eliminated joint tenant ownership of 4,200 acres, approximately, which are the subject concern in this case. I believe defendant only identifies about 681 acres of that, which to eliminate, to exclude all real estate, all real property issues with present an incomplete picture.

Since the defendant is not going to move for summary judgment on plaintiff's total acreage and other claims, should plaintiff total acreage of 4,200 and her allegations be excluded, the totality of the circumstances will not be presented to the trier of fact.

Defendant's claim statute of limitations, then res judicata. Res judicata is--is based on the case. They're applying it to a common law marriage case, the allegations within that common law marriage case.

The plaintiff is not seeking her partnership from these defendants, plaintiff is not seeking a divorce from these defendants either. Those are allegations in the cause of action in the prior cases.

They claim statute of limitations. And defendant statutes three years for plaintiff to file; however, defendants claim she filed after the three years and in the defendant's claims on July, 2007, plaintiff questioned two parcels of land and that's cited in his facts at Page 10, at No. 36; however, plaintiff claims she began on August 14th,

2006, by certifying a letter to Professional Title Service addressing one parcel, the 6.32 acres that involved the house, real property. That is, both of these statements are within one year.

Defendants did admit an error pertaining to the chain of title to that 6.32 acres, the house parcel, that involving plaintiff's whole real estate soon will become to light during our conversation after 2007 of contact.

Approximately November of 2006, Clay Holbrook approached myself in this courthouse. Within--anyway, within the attachment of plaintiff's res--to the respondent's to summary judgment is a transcript. In that transcript, there is conversations where the defendant, on Page 8, he included, admitted he included the house, he admitted, on Page--

THE COURT: Now, what--what are you referring to, now? The--

MS. HAMPTON: My affidavit.

THE COURT: Okay. You said transcript, that wasn't--

MS. HAMPTON: There is a--within the attachment to plaintiff's response to the summary judgment of defendant is the transcript. There--that was done on August 27th, 2007, at the offices of Professional Title Service with Clay Holbrook.

THE COURT: Ma'am, are you saying there's a transcript of something that's attached to your affidavit?

MS. HAMPTON: Yes. It's Exhibit 25.

THE COURT: Okay. You're talking about the August 27th, 2007, meeting?

MS. HAMPTON: Yes.

THE COURT: Okay. And let's just--okay. And what is it specifically you're referring to?

MS. HAMPTON: On Page 6.

THE COURT: Okay.

MS. HAMPTON: On Page 6--I apologize, these aren't numbered, but if you go to the mid-mark and a couple paragraphs down, it will have a, "Clay." We were discussing the property.

THE COURT: Just a moment. It says "Clay: (colon) We were discussing the property--

MS. HAMPTON: Okay.

THE COURT: This is on Page 6; is that correct?

MS. HAMPTON: Page 6, towards the bottom, it says-- it's "Clay, you're just releasing us--

THE COURT: Okay.

MS. HAMPTON: --because we didn't have--we didn't do--we're not capa--culpable on the rest of it."

THE COURT: Okay.

MS. HAMPTON: The reason for the meeting was to take care of the six acres and receive the twenty-one-plus dollars for that, 21,185.47.

And then on Page 8,--on Page 8, half-way mark up from that is, Clay: We've included the house.

Through this transcript, he's admitting that he did include the house by mistake and that he's not culpable for the rest.

THE COURT: Well, wait a second, ma'am. Where are you at?

MS. HAMPTON: Okay. On Page 8, halfway.

THE COURT: Okay. I'm on Page 8.

MS. HAMPTON: And come up probably four or five or six, it will say, "Clay, we included the house," pertaining to the error.

THE COURT: Okay.

MS. HAMPTON: So, he admits--

THE COURT: Which it says, we included the house and that's why. Okay.

MS. HAMPTON: --he included the house and this is why he was, at the time and prior to my filing of the complaint, he priorly admitted the house for the 21-plus dollars. And there's an admission there that he made the error and this is what led us to--led to the oral agreement prior; but during this meeting, he--he's trying to get out of the lawsuit now and we're discussing why we're to take care of the house only and leave the other issues for the court to decide.



THE COURT: And where does he say that the settlement agreement is clear for that, ma'am? That's what I'm looking for. Is that the settlement agreement only applies to the house.

MS. HAMPTON: The settlement agreement, the reason why I could not complete our oral agreement, the--on the 6.32 acres for the--for the money amount to exchange and relinquish my rights, during that meeting, I did read all the documents and noticed the settlement--settlement agreement was attached and because of that reason, I could not finish my obligations either.

THE COURT: Well, ma'am, what I'm trying to find out here--

MS. HAMPTON: Okay.

THE COURT: --your--what is the nature of the settlement agreement that you believe, what are the terms of the settlement agreement that you believe? You thought it was just for the six-point-some-odd acres?

MS. HAMPTON: No.

THE COURT: What did you think the settlement agreement was for?

MS. HAMPTON: When I read the settlement agreement, I realized he had found the complaint that I filed and he added that to our oral agreement, but the oral agreement was like way before August 8th, but on August 27th, apparently, he

found the August 14th complaint and I believe the settlement agreement was attached. If I didn't read that, I wouldn't be here today. I read that and I was totally shocked to see a settlement agreement of that; why in the world would I agree to turn over 4,200 acres for a lousy twenty-one thousand-plus dollars? That was never talked about, never mentioned through an agreement to settle the house.

THE COURT: Well, but ma'am, what it has to do with you is your claims against Mr. Holbrook.

MS. HAMPTON: Uh huh (affirmative).

THE COURT: And so the question is, is, did you believe you were relinquishing all of your claims against Mr. Holbrook as of that date? Were you relinquishing everything against Mr. Holbrook in exchange for the twenty-one thousand?

MS. HAMPTON: Not in the oral agreement.

THE COURT: Okay.

MS. HAMPTON: We only--we never discussed 4,200 acres prior. The oral agreement only was a discussion of six point acres for the \$21,000. That was the oral agreement; however, so many weeks later, he had found that I filed the suit, 'cause I had realized that all of this was connect--now connected and I could find that there was a big mistake. And when I filed suit, because of his avoidance, of not keeping up the oral agreement on a certain date, I applied--I--I filed the complaint. But on August 27th, he called me in to take

care of the oral agreement.

THE COURT: And he was saying, I want everything taken care of on--for the payment of 21,000?

MS. HAMPTON: As I read through, what I thought I was signing off was just six acres for the \$21,000, all of a sudden, I seen an attached document called settlement statement agreement and was concerned why he is now applying this. This was not part of our oral agreement discussion, which I believe he attached it because he found the complaint and thought this was a quick way, if I didn't read it, he'd slip right through.

THE COURT: So, the transcript that you have attached--

MS. HAMPTON: Uh huh (affirmative).

THE COURT: --just so we're straight on this, are you suggesting that's a complete transcript of the settlement meeting?

MS. HAMPTON: This happened--yes, this is a complete transcript of that one day, when I realized--

THE COURT: Of the August 27th one?

MS. HAMPTON: Of the August 27th--

THE COURT: But after that, you'd already filed. So, this is the one where it broke down, basically where you realized that he was wanting to settle more, but this was not your original discussion transcript?

MS. HAMPTON: This was not our original agreement, no, which was an oral agreement for the house only.

And then when I had typed up an agreement, he didn't like my wording and it was for the house, for the 21,000 and then, I asked him to do it and then, he never came around the next day, days go by, I get concerned because I don't know about an oral agreement, if it's a one-year statute of limitation, I protected my rights and I filed that complaint immediately. Did not serve him, in case he was to continue to take care of--of his obligation, compensate for his error.

But on August--

THE COURT: So, you wanted to collect the \$21,000 and then still turn around and sue him for the 4,200 acres? Is that essentially--

MS. HAMPTON: We--

THE COURT: --what you wanted to do?

MS. HAMPTON: --we had discussed all of this prior to August 27th. Both of us had realized there was a big error, I did not receive any documents; however, the defendants avoided giving me any documents, but stated, we'll take care of one--basically, we'll take care of the house first. And that's why I came down August 27th, to take care of the house.

THE COURT: Ma'am, what I'm trying to find out is, what do you believe the terms were of this settlement

agreement? And what is--

MS. HAMPTON: In the oral--

THE COURT: --and what do you base those terms on?

MS. HAMPTON: --in the oral--

THE COURT: I'm trying to find out whether there was a meeting of the minds on that settlement--proposed settlement agreement.

MS. HAMPTON: Okay. The oral agreement, we had meeting of the minds, it was, just, he had to draw up the document 'cause he didn't like mine.

THE COURT: Okay. What were the terms, do you believe?

MS. HAMPTON: The terms were to--I would relinquish my rights, basically, it was all stated on a document he typed up, everything was legit on August 27th, so all those terms in that August 27th disclaimer, I believe would be correct, to my belief, and it's all listed in the disclaimer. Those are the terms where I would relinquish my rights to the error of title of 6.31 acres for the value of--consideration of 21,185.47.

THE COURT: Okay. Well, wait a second here. Do you--

MS. HAMPTON: Those--

THE COURT: --have you attached that document?

MS. HAMPTON: It's in defendant's--

THE COURT: Okay. But you're saying that that

document was accurate?

MS. HAMPTON: The disclaimer is accurate. He had typed up, for the 6.32 acres, that was accurate. But the trick, and I can't find another word for it, was, he attached settlement statement agreement that we never once discussed prior.

THE COURT: Well, so, ma'am, when you say the disclaimer agreement, I--I'm trying to sort out what it is you're talking about. You need to help me out here and refer to me exactly what it is you're referring to, because this is the critical issue for me, is whether or not--

MS. HAMPTON: Okay.

THE COURT: --there is a reasonable basis to find there is a disputed fact regarding the existence of an oral contract. And--and I'm looking to see what you believed the terms of the oral contract were and where that--where that document is--is--why you believe those terms are accurate, the basis for what you believe those terms are.

MS. HAMPTON: The basis, he agreed to pay the money to relinquish my rights of my titled ownership that the company erred in. I don't believe I have the--a document to show that at this time.

THE COURT: Okay. So, there's no document that shows what the terms of that agreement were; is that correct?

MS. HAMPTON: Not at this time--

THE COURT: Well, this is--

MS. HAMPTON: --to show--

THE COURT: --the time, ma'am, there's not any other time. This is the now. Do you have an agreement that shows the existence of those terms?

MS. HAMPTON: Defendants typed up the agreement, I don't have that agreement, but it did not match--the August 27th meeting was totally changed to our terms of an oral agreement, to relinquish my rights of six acres only for \$21,000, which was an escrow order that they erred in. That is an oral agreement and since that did not ever happen, I had to file a complaint to save my rights for trial.

THE COURT: Ma'am, what do you--what do you believe the term--what are you asserting the terms were of the oral agreement?

MS. HAMPTON: When you say "terms", could you--

THE COURT: Yeah. In other words, the terms of a contract would be, you know, the--the things that go to the heart of the agreement. In other words, there would be a payment, you allege, of twenty-one thousand some-odd dollars in exchange for what? What--what--what were the terms of the--of the oral agreement from your perspective?

MS. HAMPTON: He would pay me the \$21,185.47 to relinquish my rights to a deed of 6.32 acres. That was a discussion and an agreement we came to.

THE COURT: So, it was--it was totally to relinquish rights to a deed? That's all it was?

MS. HAMPTON: To relinquish my rights to a deed, one deed of 6.32 acres.

THE COURT: Okay. So, essentially, your oral agreement was the payment would be made to relinquish the rights in land. Is that what you're--

MS. HAMPTON: Yes.

THE COURT: --is that what you're telling me?

MS. HAMPTON: It was land, real property.

THE COURT: So, ma'am, is it your assertion that it was not in the nature of a settlement agreement?

MS. HAMPTON: No.

THE COURT: It was not in the nature of a settlement agreement?

MS. HAMPTON: No. The--

THE COURT: But rather was for payment for an interest in land. Is that what you're asserting? I want to make sure I understand this, ma'am.

MS. HAMPTON: Correct.

THE COURT: Okay. All right. Thank you.

Go ahead.

MS. HAMPTON: And go back to--I'm not sure I left off, the statute of limitations, defendant's claim. And back to the defendants did admit an error pertaining to the chain



of title that involved the 6.32 acres. He admitted that on November, 2006.

The defendant never did supply their findings to--to myself and how they came up and acknowledged the error; however, all the above statements are within a three-year statute of limitation and therefore, it cannot be artificially separated from the overall claims and the newly--newly discovered evidence. The defendant's method used demonstrates their wrong involve (sic) for--for an example, defendant's claim on the two-parcel house and the vacant, which is 6.32 acres and 675 acres, that sold--did sell in 2002, which that total acreage is 681 acres. That leaves 3,400 acres that are at issue as well.

I will--the continuance of the wrong--of the error of the title company as of 2000--2008, all of the real estate has now sold in different sections and I'm still gathering documents on that.

The last portion--portion of property was a hundred acres that sold for 125,000. Again, my name was not attached to my titles when it sold and that came to my attention during the year, I think it was closer to 2008, February; however, the doctrine of fraudulent concealment tolls the statute of limitations. As a result, during discovery stage, defendants produced hundreds of documents, nine hundred-plus, at different days and times, is when I discovered the chain of

title error in the year 2008, involving all of the Carbon County real property.

The evidence for trial is now in black and white. The alterations of certain documents within the defendant's files is concealed, was not even available public records.

In short, your Honor, on a summary judgment motion or the jury should make one determination as a result of the defendant's actions that involve all the plaintiff's real estate, property, due to their error and continued actions to conceal, misrepresent, mislead myself. What I mean by that is, in 2007, he agreed to start paying for his errors, compensate, starting with the 6.32 acres that was just discussed.

THE COURT: Well, but--but ma'am, that's what I just asked about. You said that when he agreed to pay, he was just paying you for the deed, that was--I asked you that specifically, whether that was in the nature of a settlement agreement or whether that was for the purchase of the land. And you indicated that it was for the deed.

MS. HAMPTON: There is an existing deed, today, that said I have ownership of that 6.32 acres. There is a deed right now that I have, but--however, because of the chain of title, it really doesn't exist. This is why he wanted that deed in exchange for the \$21,000, to cover up the error.

THE COURT: Ma'am, I--I'm still trying to focus

down--come back to this \$21,000.

MS. HAMPTON: Okay.

THE COURT: And--and you have told me that what you were paying the \$21,000 for was essentially--or he was paying the \$21,000, was for you to relinquish your rights in the property, that it in essence was not as--in fact, I asked you specifically, was it a settlement agreement? You said no, it was not, it was for the rights to the property and that deed. Is that correct?

MS. HAMPTON: Correct.

THE COURT: All right.

MS. HAMPTON: And I'm not sure if any law warrants their actions for concealment, but all of the issues for years have been totally concealed, never exposed, never once, no one came to me and said, hey, there was an error. Through all of my research, continuing, trying to find the error, and then now this suit, is the only time I received any documents from the files is through the discovery stage, to expose what really happened. And the doctrine of fraudulent concealment will toll the statute to where the defendant, if they did conceal, mislead, should be applied.

And was there any other questions that I haven't answered?

THE COURT: I don't believe so, ma'am. Thank you.

Mr. Baer?

MR. BAER: Your Honor, if I may, just one more point regarding this oral agreement. Paragraph 12 of Ms. Hampton's affidavit, it's on Page 3 of her affidavit, she says, We both agreed to half of 42,000, approximately, the remainder of what escrow order of 200,000.

Paragraph 13, Holbrook requested that I draw up the agreement, I did, and delivered it to the office of Professional Title Services. The agreement is attached to my affidavit as Exhibit 8.

Exhibit 8 to her affidavit has a Bate stamp of PTS662.

So, the document that was provided to the defendant by plaintiff is titled Settlement Agreement, it references this 6.32 acres and then has a general release at the end, Paragraph 2, called release. Hampton hereby completely releases, acquits, forever discharges Professional Title Services.

And so, when they met on August 27th, the defendant had discovered this lawsuit and wanted the lawsuit dismissed as part of the agreement and she said, this agreement is only for the six acres.

So, this--this document that was prepared by the plaintiff demonstrates that it was a settlement of disputed claims. And so, when the defendant discovered that there was a lawsuit, she was planning on proceeding with a lawsuit,

that's, I believe the facts in evidence demonstrate that there was no meeting of the minds regarding this agreement.

THE COURT: Okay. Thank you.

MR. BAER: Thank you.

MS. HAMPTON: Could I respond to that?

THE COURT: If you have something to respond to that, ma'am, I'll let you. Go ahead.

MS. HAMPTON: On that agreement he refers to--

THE COURT: Uh huh (affirmative).

MS. HAMPTON: --of the 6.32 acres was at the time of my knowledge of the error in that property, the other wasn't discussed or realized until further investigation of the total acreage, which then, on August 14th is when I decided I needed to file a complaint, because this involved more than 6.32 acres. But that agreement that I'd drawn up was prior to my knowledge of all acreage and even pointing the finger at the defendants, which would relinquish the rights to that 6.32 acres for that dollar amount, that was all that was in that document, your Honor.

THE COURT: Okay. Thank you.

I have reviewed very carefully the pleadings the parties have filed. In my mind, I did have a question with respect to the existence of a dispute regarding the terms of an oral contract; however, I believe those issues have been resolved in my mind at today's hearing.

Let me indicate my thinking on that. With respect to all of the underlying claims, these have--the--the defendant has shown in the briefing that these claims essentially have all had an opportunity to be litigated in--in prior actions. And--and the reason why that becomes important is whether or not it's been determined whether or not the plaintiff had any interest in those properties, and if she had no interest in those properties because they were previously extinguished in prior litigation, then in fact, she would have no basis to come back to Professional Title Services for their work.

So, for the reasons set forth in the defendant's memoranda, I do find that the doctrine of res judicata does, in fact, apply and I am persuaded by that.

Similarly, I also believe the, as a separate grounds, I also believe the statutes of limitations arguments apply.

The big question in my mind had to do, as I've indicated, with the existence of an oral contract. And the question in my mind is whether or not there was an oral contract or a settlement agreement in which the parties now are disputing the terms, or whether, in fact, it was some other form of agreement.

The plaintiff has, today, clarified for the Court in her testimony in response to my questioning, on numerous

occasions--numerous occasions, that she believed that she was purchasing, essentially--or she wasn't purchasing, she was surrendering an interest in real estate through that oral contract. And that, in fact, the money would be paid and the deed would be conveyed.

I believe that that argument is barred by the statute of frauds, specifically Utah Code Annotated Section 25-5-1. No estate or interest in real property other than leases for a term not exceeding one year, and that's not what we're dealing with here, nor any trust or power over concerning real property or in any manner relating thereto shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

It appears to me that what we've got is the plaintiff now asserting that she was conveying an interest in property in a deed in exchange for the twenty-one thousand. As a consequence, that is a contract for the sale of property, sale of land. By law, it is required to be in writing, there cannot be an oral--an oral enforcement of that claim or an oral contract for that claim.

So, as a consequence, the Court finds that her claim for an oral agreement for sale of land is, in fact,

unenforceable as a matter of law and barred by the Utah statute of frauds contained in 25-5-1.

As a consequence, the Court cannot find that there was any oral contract of settlement; in fact, in--as I questioned--or a dispute regarding the contract of settlement; and in fact, as I questioned the plaintiff as to whether there was an--a contract for settlement that was at issue, she specifically indicated no.

Accordingly, I'm granting the defendant's motion for summary judgment in full and would ask Mr. Baer to please correct the--prepare the paperwork and to please include the analysis that's utilized under the separate claims as part of the Court's justification for the order, because I am, in fact, adopting those as separate, independent justifications for granting the motions for summary judgment.

MS. HAMPTON: Your Honor, is that the final?

THE COURT: Yes, ma'am.

MS. HAMPTON: What about the concealed fraud argument in the third complaint?

THE COURT: Ma'am, I--I have--I have issued my ruling today. When you say the concealed fraud argument, my point here, ma'am, is that your interest has already been extinguished as against--in these properties in prior litigation.

MS. HAMPTON: Excuse me. They weren't extinguished,



they were fraudulently concealed and erred in title--

THE COURT: But they were--they were presented before a Court--

MS. HAMPTON: No, they were not, your Honor.

THE COURT: I--again, I'm going through the information that has been provided and the documents that were provided by the defendant in this case and it would appear that they were in fact, that--

MS. HAMPTON: Your Honor, they're incomplete documents and hearsay.

THE COURT: Well, but, ma'am, are you suggesting that there--the prior court orders have not in fact ruled on these claims?

MS. HAMPTON: They did not rule on my property issues, they ruled on a common law marriage and I--

THE COURT: But as part of that common law marriage, they, in fact, issued a--an appropriate property decree in terms of allocating the division of property, did they not?

Mr. Baer, am I wrong on that?

MR. BAER: I believe that they did and following lawsuits in 2002, '3 and '4, also adjudged those claims.

THE COURT: Yeah. There were also additional claims in those later lawsuits, were there not, having to do with these properties, as I read your--

MR. BAER: Yes, there were.

THE COURT: --briefs and as I read the orders on those later claims.

MS. HAMPTON: That is not true, your Honor, it's incomplete documents and they're alluding off findings of fact and it does not state facts. It will state the common law marriage and I'm not entitled to my partner, which was my ex-husband, I'm not entitled to his portion of the property. That does not say that I cannot have my joint tenant property. This is joint tenant property in discussion, those titles are--are joint property.

THE COURT: But--but ma'am, but ma'am, were they--I want to give you every opportunity here, I don't want to cut you off, but I'm suggesting to you that, as I reviewed the defendant's motion and memorandum supporting motion for summary judgment, specifically, ultimately, the Court dismissed plaintiff's 1999--well, let's get down to the statement of undisputed fact. Okay.

We have all of those facts that have been listed and I would point out, ma'am, that you have not met your burden that is required in terms of responding appropriate to the--appropriately, as required by the Rules of Civil Procedure to these--to these affi--or to these statements of fact.

MS. HAMPTON: On who? Prior cases?

THE COURT: No, ma'am, as required for you to respond to the memorandum in support of motion for summary

judgment, specifically the statement of undisputed fact.

MS. HAMPTON: Is that these defendants?

THE COURT: Yes.

MS. HAMPTON: What if I agree to all of them?

THE COURT: You agreed to every one of these facts.

MS. HAMPTON: Okay. So, I agreed to them, your Honor, but, however, that's not the issues of this case, that is not the subject matter or the issues to this case. Those prior cases involved a divorce, just a divorce, and the final ruling was that no common law exist and the next is release lis pendens. Those lis pendens were on joint property. It never did say all the property goes to the defendant, any defendant, in any of those prior cases. They claim res judicata on marriage and I'm not entitled to the defendant's portion, your Honor.

THE COURT: Well, you will--I'm going to let you, Counsel, kind of go through and--and let's kind of summarize this for her so she has a good understanding, I want to give her every opportunity with respect to these statement of facts, because as I went through, I was--I was persuaded that in fact, there was no statement of fact with respect to these parcels of property because they had, in fact, been resolved through prior litigation.

Counsel?

MR. BAER: Your Honor, Exhibit M to the defendant's

memorandum in support of the motion for summary judgment is a complaint filed in 2004. There are the allegations of this complaint, Paragraph 5, I, plaintiff, on information and belief, allege the defendant, who is Kim Jensen and Mr. Jensen's attorney, has a breach of fiduciary duty. The trust account regarding an interest-bearing account of this 2002 sale no longer exists.

And then she goes on, I believe my joint partner defendant has now sold all of our other Carbon County real estate as of approximately 2004, once deeded in both plaintiff's and defendant's names, approximately 3,200 acres. The record will show that somehow a limited liability company sold our real estate interests.

Paragraph 10, defendant's true records will show that petitioner was never given any oral or written documents to allow any ownership change on approximately 4,000 acres, which are at issue.

And--and so this, I believe that this complaint, the 2004 complaint, it summarizes, because then there's a motion to dismiss based on res judicata that walks through the previous lawsuits attached as various complaints and the order from the Court does say that these issues were previously adjudicated.

THE COURT: And--and that, essentially, is what-- where my focus has been, ma'am. Again, it goes to the fact of

whether or not you had any right, title and interest in this property. You can't go against the title company if you have no right, title and interest as determined by prior court order. And it would appear to me that these interests have been determined by prior court orders in your litigation with Mr. Jensen.

MS. HAMPTON: Your Honor, I have no interest to the portion of Mr. Jensen's property in the common law divorce case. He had no right to my portion either.

THE COURT: But ma'am, the--what I'm suggesting to you is that those prior cases have resolved the issue of who owned the property.

MS. HAMPTON: I do not see a court--final court order, judgment, saying that my property, joint property is to go to Mr. Jensen.

THE COURT: Well, what I'm suggesting to you is, it--it appears to me that the issue of these lands, okay, the property and these lands has previously been decided, this real property has previously been decided in prior litigation and--and that, I believe, is what Mr. Baer was referring to. Did that not have to do with litigation surrounding these properties?

MR. BAER: Yes, it did.

MS. HAMPTON: The litigation was that the defendant, Kim Jensen, did not want his portion separated, half to me,

Those were what litigated and they--you don't have a full document or--of the case to show all that. The final order doesn't state in detail any of that property--

THE COURT: But it dismissed your claims to those properties, ma'am, I believe.

Did it not, Counsel?

MR. BAER: Yes.

THE COURT: It--it--in other words, it conclusively dismissed your claims to the properties, by conclusively dismissing your claim, your assertion to that property, ma'am, it means that you did not have any right, title or interest to those properties.

MS. HAMPTON: This is why I went to the Professional Title Service, to find out why. The case of 2004, that was served in September, 2004, finally in 2006 was dismissed because somebody kept telling me I have no interest, so I contacted Clay Holbrook. This is where we started to have agreements.

THE COURT: But--but what I'm suggesting to you, ma'am, is that your time to litigate that claim, okay, if you believed that you had a right, title and interest underlying to that property, your claim--your time to litigate that claim was back in those prior lawsuits. You were dismissed out, 'cause that--you had made those claims to those parcels of property and the Court found that you--and dismissed your

lawsuit and essentially found that you had no right, title or interest to those parcels.

Now, that's my understanding of those prior cases. If I'm wrong, Mr. Baer, please correct me.

MR. BAER: That's my understanding as well.

THE COURT: So, essentially, ma'am, if you--if a Court has previously ruled that you have no right, title or interest to those properties, if you have no right, title or interest to those properties as established by a prior court order, then those issues are settled. You can't turn around and then sue Mr. Holbrook on an underlying claim that you do have a right, title and interest, when a court has already determined that you have no such right, title or interest to the property.

MS. HAMPTON: Mr. Jensen claimed in those complaints that I did not have a right to his interest. I don't see a document where it says I do not--I don't have right to title.

THE COURT: I believe, ma'am, that's what those cases were about.

MS. HAMPTON: I don't see those documents--

THE COURT: That's--

MS. HAMPTON: --right to title.

THE COURT: That's--it's my understanding, ma'am, that in fact, your claims to those properties were, in essence, distinguished. Now, do the orders specify, Mr. Baer,

are you aware of--as to whether she was awarded any right, title or interest in those properties?

MR. BAER: She was not. My understanding of those lawsuits was there were very similar allegations to this suit, the ones that I read in that 2000 suit--2004 suit, were regarding transferring properties out of her name and fraudulently concealing different types of things and those cases were all ruled against her.

THE COURT: And that was my understanding as I reviewed them and reviewed--went through all of them. I just wanted to make sure that my understanding is--is accurate.

Ma'am, it appears to me that those claims have all been made, you've already gone through substantial litigation on those claims.

MS. HAMPTON: The only part was the common law, there was a lis pendens put on my property to protect it, the very first one was my interest property. Because of the fraud and I pled fraudulent doctrine--the doctrine of fraudulent concealment is what led me to Mr. Holbrook. I was unaware of the fraud that was committed and that tolls the statutes, even if it's nine, ten, twenty years later, it tolls the statutes when there's concealed fraud. This is what's happened through all of these litigations and never once did this company come to me and tell me, there's an error, this property is being sold, I'm doing title research, there's an error. That was



all concealed from everybody.

I don't see a court order specifically saying that my title I have no interest to.

THE COURT: But quite frankly, ma'am, that is not before me today. That issue's not before me; in other words, this is not a quiet title action.

MS. HAMPTON: No.

THE COURT: This--this is an action against Mr. Holbrook.

MS. HAMPTON: Yes.

THE COURT: Okay. And essentially, what I have done is, I've found against you on your claims against Mr. Holbrook.

MS. HAMPTON: For him concealing in his error?

THE COURT: I--I have--I have found, based upon the fact that those issues had already been resolved, that--that the--that the issues that you have litigated in this case were substantially litigated in prior--in prior cases.

MS. HAMPTON: Your Honor, I believe that's false. I had never once, and if it was, I wouldn't be here today, because it would have been resolved with those issues. It was totally hidden and concealed. This is an issue of fraud against a title company, not going from a common law marriage and after my ex-husband's portion of the joint property, that's not--

THE COURT: But, ma'am--

MS. HAMPTON: --what's litigated.

THE COURT: But ma'am, there was later litigation other than the common law marriage.

MS. HAMPTON: 2004, there was suspicion of fraud, I didn't know how to get it.

THE COURT: But it was--it was alleged at that time, ma'am, and it was dismissed, the claim was raised, you raised the claim and the case was dismissed at that time. You cannot turn around and raise the same claims later in a different litigation.

MS. HAMPTON: I tried, through that litigation, through the 2004, the dismissal of 2006, I tried to obtain documents from the title company, certified letter sent several times, avoidance. That's concealment. Avoidance. He did not produce; however, they dismissed, this is when he entered and say, I will take care of it, there is an error, I figured he was, by now, I know he was avoiding, 'cause I could have appealed it--

THE COURT: But--but ma'am--

MS. HAMPTON: --he prevented me a cause of action.

THE COURT: Ma'am, I--I'm convinced that I've--I'm persuaded by the defendant's arguments in this case. I believe that you did have an opportunity in that prior litigation to raise those claims and in fact, did raise those

claims--

MS. HAMPTON: I was prevented--

THE COURT: --in the prior litigation.

MS. HAMPTON: --your Honor.

THE COURT: You--you did, in fact, raise those issues at that time, ma'am, and so I'm simply suggesting that for the reason that it has already been decided and further, that the statute of limitations has run, I am granting the motion for summary judgment as presented by the defendant in their--

MS. HAMPTON: Even on fraudulent concealment doctrine?

THE COURT: Yes, ma'am. I--I am, on that, because I believe those documents do in fact show that you were making similar claims back in that prior litigation. You're indicating that you couldn't find things back then, but the point is, is, you should have moved forward in that prior litigation to obtain that information.

MS. HAMPTON: Your Honor, in that last one, it was pertaining to 601--81 acres, an interest-bearing trust account that was gone. That's what that case was about.

THE COURT: Ma'am, thank you for coming today and that'll be the order of the Court.

Would you prepare the order, Mr. Baer?

MR. BAER: Yes. Thank you, your Honor.

THE COURT: Thank you.

MS. HAMPTON: Thanks, your Honor.

THE COURT: Thank you both for coming today.

(Whereupon, this hearing was concluded.)

\* \* \*

TRANSCRIBER'S CERTIFICATE

STATE OF UTAH :  
 : ss.  
COUNTY OF SALT LAKE :

I, Toni Frye, do hereby certify:

That I am a Certified Court Transcriber of Tape Recorded Court Proceedings; that I received the electronically recorded files of the within matter and have transcribed the same into typewriting, and the foregoing pages, to the best of my ability, constitute a full, true and correct transcription, except where it is indicated the Electronically Recorded Court Proceedings were inaudible.

Dated this 9<sup>th</sup> day of December, 2009.

Toni Frye  
Toni Frye, Transcriber

I, RENEE L. STACY, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public for the State of Utah, do hereby certify that the foregoing transcript, prepared by Toni Frye was transcribed under my supervision and direction.

Renee L. Stacy  
Renee L. Stacy, CSR, RPR

My Commission Expires:

11-9-2011

